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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 298.

JOSEPH B. SARGENT AND GEORGE H. SARGENT,
APPELLANTS,

vs.

JAMES C. COVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 18, 1890.

(14,343.)

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1 [L. S.] The President of the United States of America to Joseph B. Sargent and George H. Sargent, Greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, in equity, on the first Monday of April, A. D. 1886, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by James C. Covert, and do further and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of New York, on the fifteenth day of March, in the year one thousand eight hundred and ninety, and of the Independence of the United States of America the one hundred and tenth.

TIMOTHY GRIFFITH, *Clerk.*

WM. H. KING,
Complainant's Sol'r.

The defendants are required to enter appearance in the above cause, in the clerk's office of this court, on or before the first Monday of April, 1886, or the bill will be taken *pro confesso* against them.

T. G., *Clerk.*

2 (Subpœna endorsed:)

I hereby certify that on the 15th day of March, 1886, at the city of New York, in my district, I personally served the within subpœna in equity upon the within-named defendant, George H. Sargent, by exhibiting to him the within original and at the same time leaving with him a copy thereof.

Dated March 15, 1886.

(Signed) M. T. McMAHON,
United States Marshal, Southern District of New York,
Per JOHN E. DOWLEY, *Deputy.*

(File-mark:) U. S. circuit court. Filed Mar. 23, 1886. Timothy Griffith, clerk.

3 In the Circuit Court of the United States, Southern District of New York.

JAMES C. COVERT, Complainant, *ag'st* JOSEPH B. SARGENT and GEORGE H. SARGENT, Defendants.	In Equity.

To the honorable the judges of the United States circuit court within and for the second circuit and the southern district of New York:

James C. Covert, a citizen of the United States, and of the State of New York, and a resident of West Troy, in the county of Al-

bany, and State aforesaid, brings this, his bill of complaint
4 against Joseph B. Sargent and George H. Sargent, citizens of said State, and residing and doing business in the city and county of New York, district and State aforesaid, as copartners, under the firm name of Sargent & Co., and thereupon your orator complains and says:

I. That prior to the 6th day of April, A. D. 1875, said James C. Covert, a citizen of the United States, was the original and first inventor of a new and useful improvement in "clasps, or thimbles for hitching devices," not known or used by others before his invention thereof, and not in public use or on sale, with his knowledge or allowance, for more than two years prior to his hereinafter-mentioned application for letters patent therefor; and, thereupon, said James C. Covert made proper and lawful application for letters patent of these United States for said invention, whereupon such due and legal proceedings were had that letters patent of these United States, signed, countersigned and sealed by the Secretary of the Interior, and the Commissioner of Patents of the United States, respectively, dated April 6th, A. D. 1875, and numbered 161,757, were granted and delivered to James C. Covert for said invention, whereby there was granted and secured to said James C. Covert and his heirs, or assigns, for the term of seventeen years from and after the said 6th day of April, 1875, the exclusive right to make, use and vend the said invention throughout these United States, and the territories thereof. And your orator has ever since remained, and is now the sole and exclusive owner of said letters patent, and of all the rights and privileges granted and secured thereby.

Your orator further complains and says, that said invention is of great value and utility, and that he has made it profitable to himself and the public by making and selling large numbers of
5 "clasps or thimbles for hitching devices," embodying said invention, and that although the demand for "clasps or thimbles for hitching devices," made in accordance with said invention and under said letters patent, is very large, yet he is abundantly able to supply such demand.

Your orator further shows unto your honors that, as he is advised by his counsel, and believes and avers, said original letters patent No. 161,754 is valid and effectual at law and in equity to secure to your orator the exclusive rights and privileges thereby granted; that so far as your orator has been informed and believes, the public have generally acquiesced in your orator's rights under his said letters patent aforesaid, and its validity has never been seriously called in question, except as hereinafter more fully stated; that your orator is entitled to the entire and exclusive enjoyment of the said invention and discovery and the said existing letters patent, and that but for the infringement by said defendants hereinafter complained of, your orator would have been and would now be, in the undisturbed possession, use and enjoyment of said invention, discovery and improvement, and of said exclusive rights and privileges and in receipt of the profits of the same.

Your orator further shows that he and his firm have spent large

sums of money to procure the necessary tools, implements, and machinery to manufacture his said invention; also, to procure buildings and property in which to carry on said business, in advertising the sale of the goods manufactured under said patent, and in various other ways in and about said business and has built up a large and profitable business, all of which with said property, tools and machinery will be damaged and rendered valueless if the infringement of said letters patent by said defendant herein, as hereinafter set forth, is not properly and fully arrested and prevented.

6 Your orator further shows unto your honors, that the said defendants well knowing the premises and the rights and privileges secured to your orator, as aforesaid, and in order to injure and damage your orator in his said business, and to deprive him of the exclusive enjoyment and use of the said invention, and of the profits, benefits and advantages which would otherwise accrue to him therefrom at the city of New York, county of New York, State and southern district of New York, and elsewhere within the United States, have jointly and severally, as your orator is informed and believes, and so charges the fact to be, confederated with other persons whose names are now unknown to your orator, to infringe your orator's said original letters patent by unlawfully making, selling and using, and endeavoring to procure and induce other persons to unlawfully sell and use in this county, to wit, in this judicial district, "clasps or thimbles for hitching devices," containing and embodying the invention and improvements aforesaid; and in pursuance of such unlawful plan, the said defendants, without your orator's license or permission, and in violation of his exclusive rights aforesaid, have jointly and severally made, or sold, or used, or caused to be made, sold or used, and are now making, or selling, or using; or are causing to be made, or sold, or used, a "clasp or thimble for hitching devices," or "clasps or thimbles for hitching devices," all containing the invention and improvement secured exclusively to your orator as aforesaid; that each and every of said "clasps or thimbles for hitching devices" so made, sold or used by the said defendants, Joseph B. Sargent and George H. Sargent, contains the invention secured to your orator by the said original letters patent No. 161,757 as aforesaid; and the

7 manufacture, sale or use thereof by the said defendants was and is in violation and infringement of said letters patent belonging to your orator as aforesaid; that the said infringements and all and every thereof were and are to the great injury, damage and loss of your orator, to wit, as he believes, the aggregate sum of $50,000 damages, and that as your orator believes, the defendants jointly and severally have realized, and are realizing large gains, savings and profits from the unlawful manufacture, sale and use of your orator's said invention aforesaid, which ought to be ascertained and paid over to your orator, but to what amount your orator is not informed, and therefore prays that defendants may be required to make full disclosure thereof to this honorable court.

And your orator further shows that he is informed that said de-

fendants threaten to continue the unlawful manufacture, use and sale of said "clasps or thimbles for hitching devices," constructed in accordance with and claimed in said letters patent, and that he fears, and has reason to fear, that unless the defendants are restrained by a writ of injunction issuing out of the court, they will continue to make, use and sell numbers of said "clasps or thimbles for hitching devices," and thereby will cause irreparable injury to your orator's aforesaid exclusive rights.

In consideration whereof, and forasmuch as your orator can only have adequate relief in this court of equity, to the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief herein prayed; and may, upon their corporal oaths, and to the best and utmost of their knowledge, remembrance, information and belief, full; true, direct and proper answer make to all the matters and things stated and charged; and

8 that said defendants may answer the premises and that they may be decreed to account with and pay over to your orator their said unlawfully realized profits and your orator's said unlawfully suffered damages, with the costs of this suit.

May it please your honors to grant unto your orator the writ of injunction of this court, provisionally enjoining and restraining said defendants and their and each of their clerks, attorneys, agents, servants and workmen from making and using and vending any "clasps or thimbles for hitching devices" embodying said patented improvements during the pending of this suit, and also the writ of injunction of this court perpetually enjoining and restraining said defendants and their and each of their clerks, attorneys, agents, servants and workmen from making and using and vending any "clasps or thimbles for hitching devices" embodying said patented improvement; and that your orator may have such other or further relief as the natue of the case may require and to your honors may seem meet.

May it please your honors to grant unto your orator not only the writs of injunction conformable to the prayer of this bill, but also a writ of subpœna directing to said defendants, Joseph B. Sargent and George H. Sargent, commanding them on a day certain therein to be named, to be and to appear in this court, then and there to answer the premises, and to stand to, perform and abide by such further order, direction and decree as may be made against said defendants.

And your orator, as in duty bound, will ever pray, etc.

JAMES C. COVERT.

WM. H. KING,
Complainant's Solicitor and of Counsel.

Office and post-office address, No. 31 North Pearl street, Albany, N. Y.

9 UNITED STATES OF AMERICA,
Northern District of New York, } ss:
City and County of Albany,

James C. Covert, being duly sworn, deposes and says that he is the complainant named in the foregoing bill of complaint; that he has read said bill subscribed by himself and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Deponent further says, that he verily believes himself to be the first and original inventor or discoverer of the improvements in "clasps, or thimbles for hitching devices," patented by said letters patent, No. 161,757, set forth in said bill of complaint, and that the same have not, to the best of his knowledge, information and belief, been known or in use by others in this country, and not patented or described in any printed publication in this or any foreign country, before the invention thereof by himself; and that said invention was not in use or on sale in said United States, with his knowledge, allowance or consent, for more than two years prior to the date of his application for said letters patent; that said invention or improvement, to wit, said "clasps, or thimbles for hitching devices," was and is new and useful, and that said invention has not been abandoned by deponent; that said letters patent are good and valid, and that deponent is the sole, absolute and only owner of said letters patent, and of the whole thereof, and of each, every and all rights and privileges granted thereby.

JAMES C. COVERT.

Subscribed and sworn to before me, this 13th day of March, 1886.

[L. S.] EDWIN G. DAY,
Notary Public, Albany, N. Y.

(Endorsed:) In equity. U. S. circuit court, south. dist. of New York. James C. Covert *vs.* Joseph B. Sargent and George H. Sargent. Bill of complaint. Wm. H. King, compl't's solicitor, Albany, N. Y.

(File-mark:) U. S. circuit court. Filed Mar. 15, 1886. Timothy Griffith, clerk.

10 Circuit Court of the United States, Southern District of New York.

JAMES C. COVERT
ag'st } In Equity.
JOSEPH B. SARGENT and GEORGE H. SARGENT.

Answer of the Defendants to the Bill of Complaint Filed in the Above-entitled Cause.

The defendants, for answer to so much of the bill of complaint in said cause as they are advised, it is material for them to answer, answering, say:

That they are informed, and admit that letters patent of the United States were issued to James C. Covert, for an alleged invention in clamps or thimbles for hitching devices, bearing date April 6th, 1875, and numbered 161,757; but whether upon due proceedings had, they are not advised, and leave the complainant to proof thereof.

They are not advised, and do not know whether said Covert is, and has been the sole and exclusive owner of said patent, and leave the complainant to proof thereof.

The defendants further answering deny that said alleged invention is of great value and utility, and deny that the public generally has acquiesced in the alleged rights of the complainant, but aver that the public generally has never recognized any of the rights purported to be secured by said patent, but has refused to admit the same.

And the defendants further answering, upon information and belief, deny that said Covert was the first and original inventor of said improvement described in said patent; but aver that long prior to any supposed invention thereof by said Covert, the same and all material and substantial parts thereof was known to, and used by; the Stanley Rule and Level Company of New Britain Connecticut, at said New Britain.

11 And the defendants further answering upon information and belief, deny that said patent is good and valid in law, but aver that the same is invalid and of no effect; and the improvements described therein and all substantial parts thereof, were long prior to any supposed invention thereof by said Covert, described and shown in the following letters patent of the United States:

No. 78849, dated June 9th, 1868, to John Wiard.

And the defendants further answering upon information and belief, aver that said letters patent are invalid and of no effect, because the alleged improvement therein described was not the proper subject for a patent, and did not require any invention or discovery on the part of said Covert, in devising or applying the same, but that clasps or thimbles of substantially the same material and substantially the same in application had been for many years prior to any supposed invention thereof by said Covert, well known and publicly used in the arts, and were on sale in the United States; and that said clasps or thimbles so known, and used, and on sale, were applied for the same purposes, and to produce the same results as those set forth in said patent.

And the defendants further answering, deny that they have made, used or sold any clasps or thimbles for hitching devices in violation of any of the lawful rights of the complainant, or in infringement of the rights purported to be conveyed by said letters patent No. 161,757.

And the defendant further answering, deny that the complainant is entitled to any relief in the premises, and pray to be hence

dismissed with their reasonable costs and damages in this behalf most wrongfully sustained.

(Signed) JOSEPH B. SARGENT.
GEORGE H. SARGENT,
By JOSEPH B. SARGENT.

12 (Answer endorsed:) U. S. circuit court. Filed May 3, 1886. Timothy Griffith, clerk.

STATE OF CONNECTICUT, }
New Haven County, } *ss:*

NEW HAVEN.

On this first day of May, 1886, personally appeared Joseph B. Sargent, one of the defendants in the foregoing answer, and made oath to the truth of the matters stated in said answer, so far as the same are alleged to be within the knowledge of the defendants, and that as to the matters therein stated upon information and belief, he believes them to be true.

FRANCIS G. BEACH,
Notary Public.

United States Circuit Court, Southern District of New York.

JAMES C. COVERT, Complainant,
ag'st
JOSEPH B. SARGENT and GEORGE H. SARGENT, Defendants. } In Equity.

This repliant saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold errors and insufficiences of the said answer, for replication thereunto, says that he will aver, maintain and prove his bill of complaint to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, and untrue, and insufficient to be replied unto by repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual, in the law to be replied unto and not herein and hereby *full* and sufficiently replied, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and
13 prove as this honorable court shall direct, and prays as in and by his said bill he has already prayed.

Dated Albany, N. Y., May 11, 1886.

WM. H. KING,
Complainant's Solicitor.

Office and post-office address, No. 31 North Pearl street, Albany, N. Y.

(Replication endorsed:) In equity. U. S. circuit court, south. dist. of New York. James C. Covert against Joseph B. Sargent and

George H. Sargent. Replication. Wm. H. King, compl't's solicitor, Albany, N. Y.

(File-mark:) U. S. circuit court. Filed May 17, 1886. Timothy Griffith, clerk.

United States Circuit Court, Southern District of New York.

JAMES C. COVERT
ag'st
JOSEPH B. SARGENT and GEORGE H. SARGENT. } In Equity. 2nd Suit.

Testimony for the complainant, James C. Covert, taken before me, Edward W. Rankin, a notary public in and for Albany county, New York as special examiner, by consent, and pursuant to the sixty-seventh rule in equity, as amended, and to notice therefor given and hereto annexed, to be used on the final hearing in this cause, at No. 31 North Pearl street, Albany, New York, August 2nd, 1886.

On said day, the case being called by said special examiner, the complainant appeared by William H. King, Esq., of counsel: the defendants failed to appear in person or by counsel.

Complainant's counsel offers in evidence "notice to take testimony," on August 2nd, 1886, before Edward W. Rankin, as special examiner, at the office of said counsel, No. 31 North Pearl street, Albany, N. Y., with proof of service of said notice by mail, on defendants' solicitor, on July 26th, 1886, and the same is marked "Complainant's Exhibit A, E. W. R., N. P. and sp. ex."

14 Complainant's counsel offers in evidence letters patent to James C. Covert, bearing date April 6, 1875, and numbered 161,757, for "improvement in clasps, or thimbles for hitching devices" (being the patent upon which this suit was brought), and the same is marked "Complainant's Exhibit B, E. W. R., N. P. and sp. ex."

Complainant's counsel reserves the right to substitute a copy of said patent for the original.

Complainant's counsel states that inasmuch as the defendants' solicitors have not appeared, he will consent that the further taking of testimony be adjourned until Wednesday, to enable the defendants' solicitors, or one of them to appear, if they desire.

Adjourned until Wednesday, August 4, 1886, at 11 o'clock a. m., at the same place.

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany Co., N. Y.,
and Special Examiner.

On Wednesday, August 4, 1886, the further taking of testimony in this cause was resumed pursuant to adjournment at the same place. The complainant appeared by Wm. H. King, Esq. of counsel; no appearance for defendants.

WILLIAM H. LOW, called as a witness for the complainant, and being first duly sworn by the examiner, made answer to interrogatories propounded to him by Wm. H. King, complainant's solicitor, as follows:

Q. 1. What is your name, age, residence, and occupation?

A. William H. Low; aged sixty-three years; residence, 100 Jay street, Albany, N. Y.; occupation, consulting engineer, solicitor of patents, and expert in patent causes.

Q. 2. What experience, if any, have you had in the consid-
15 eration of mechanical subjects, and as an expert in patent causes.

A. From my boyhood up I have been connected more or less intimately with the subject of mechanical construction, and since 1856 I have acted as a solicitor of patents in connection with the engineering business, and for the past twelve years I have appeared as an expert in numerous patent causes; during the last thirty years I have made several thousand applications for patents for the inventions and designs, and have given a great number of opinions as to the validity and scope of different patents.

Q. 3. Please look at letters patent No. 161,757 for "improvement in clasps or thimbles for hitching devices," (being the patent upon which this suit was brought,) bearing date April 6, 1875, issued to James C. Covert, being one of complainant's exhibits, which I now hand you, and state whether or not you have read and understand the same?

A. I have, and I do.

Q. 4. Please read from said letters patent the claim thereof.

A. The claim of said letters patent is as follows: "The combination of the tube A, having the projection *a*, with interior screw-threads cast therewith, and the screw C, having the eye D, and the *the* sharp point *x*, for entering into the rope; all constructed as, and for, the purposes set forth."

Q. 5. Please describe the nature of the invention set forth in said patent.

A. The invention consists of a thimble adapted to slip upon a rope, and having on one of its sides an enlargement or boss, in which screw-threads are formed. A sharp-pointed screw is fitted to pass through the boss at right angles to the bore of the thimble and so that the pointed end of said screw will pass into the bore of said thimble. The outer end of the screw is provided with
16 an eye whose center is coincident with the axial center of the screw.

Q. 6. Upon what thing is the thimble mentioned in the said patent placed?

A. It is a hitching device for securing horses and other animals.

Q. 7. Why is said thimble made adjustable upon the hitching device spoken of?

A. For the purpose of adapting the hitching device to animals of different sizes, and so that it may be applied to different sizes of an animal.

Q. 8. By what means is the thimble described in the patent made adjustable on such hitching device?

A. By means of a pointed screw, which is adapted to enter into the body of the tie, in order to secure it in a positive manner. The sharp point of the screw enters into said rope between the strands thereof, expands the rope to fill the bore of the thimble, and at the same time the point of the screw obtains a firm hold in the body of the rope, and absolutely prevents the thimble from slipping on the rope after it is properly screwed to the rope.

Q. 9. By the entering of the sharp point of the screw into the rope are the strands of the rope upon which the thimble is placed, broken or damaged in any way?

A. They are not; the point of the screw simply presses the fibres of the rope apart laterally, and condenses them into a more solid condition without producing any abrasion.

Q. 10. What is the office of the eye of the screw shown in said patent?

A. It serves two purposes—first, the introduction of a pin for forcing down the screw to its place in the rope; and second, for the reception of a snap-hook, which is secured to one end of the hitching rope, whereby a loop may be formed in the hitching device to pass around the neck or other part of the animal.

17 Q. 11. What is the object of using a thimble securely fastened on a tie-rope which is placed around the neck of an animal?

A. It is to prevent the loop that is formed in the end of the tie from being accidentally contracted, and thus prevent the animal from being choked by the tie.

Q. 12. What, if any, advantages are there in the use of a pointed screw over that of a flat ended screw in thimbles for hitching devices, when such thimbles have been placed upon hitching devices?

A. A sharp-pointed screw will enter the material of which the rope is composed and hold the thimble in a positive manner, and this is true even if the screw becomes slightly slackened; a flat-ended screw simply holds by frictional contact, and if the screw is slightly slackened does not prevent the thimble from being slipped out of place.

Q. 13. What, if any, advantages are there in the use in thimbles for hitching devices, of a screw, the one end of which is provided with an eye whose centre is coincident with the axial centre of said screw, over a screw the one end of which is an elongated head with a hole at each end of said head, so that the centre of each of said holes shall be at one side of the axial centre of said screw, when said thimble is applied to hitching devices?

A. With the eye placed centrally over the axis of said screw there is no liability of a strain being thrown upon the screw by the end of the tie bearing the snap-hook, to slacken said screw. When the screw is provided with an elongated head with a hole at each end there is a liability of the snap-hook being placed in that end of the head where a strain from the end of the tie having a snap-hook will turn the screw back and loosen the thimble upon the rope,

especially where the screw is made with a flat end bearing against the rope.

18. Q. 14. Please look at letters patent to James C. Covert, No. 161,757 (being the patent in suit) and please state whether or not, there is therein contained any suggestion or description as to the manner in which the thimble therein claimed is made; in other words, whether such thimble should be cast, or forged.

A. There is no description stating how said thimble is to be made, whether by casting or forging.

Q. 15. To what do the words "cast therewith" found in the claim of the patent in suit refer, in your opinion?

A. In my opinion, they refer to the "projection *a*," and not to the "screw-threads" contained in such projections. I think it is simply an error in punctuation, and the true intent of the claim would be shown, if the words "with interior screw-threads" were put in parenthesis. In the body of the specification, it is stated that the thimble is "provided on one side with a nut or enlargement, *a*, having a hole through it with female screw-threads." There is nothing contained in the description that such screw-threads should be produced by the operation of casting. In my opinion, it is immaterial whether the threads are cast or cut. One is the equivalent of the other, and perform the same function.

Q. 16. I now hand you a copy of a letter of Alexander and Mason, the attorneys for said Covert in his application for the said patent in suit, which letter bears date February 17, 1875, and is addressed to the Commissioner of Patents, the original of which letter is on file in the Patent Office, and forms part of the file-wrapper and contents of the applications for the patent in suit, and ask you to read the same.

A. I read therefrom as follows:

19. "WASHINGTON, *February* 17, 1875.

"Honorable Commissioner of Patents.

"SIR: We herewith amend the application of James C. Covert, by cancelling the existing claim and inserting therefor, as follows: 'The combination of the tube A, having a projection, *a*, with interior screw-threads cast therewith and the screw, C, having the eye, D, and the sharp point, *x*, for entering into the rope, all constructed as and for the purposes set forth.'

"In the patent of Wiard cited, the band is simply of sheet metal, and has no projection cast with it; the screw used in that case is not cast with an eye, nor is the screw provided with a tapering end, or point to catch into the rope; the screw he uses is flat and simply holds the rope by friction; the two cases are essentially different in construction and in use.

"Respectfully, ALEXANDER AND MASON."

A certified photolithograph copy of said letter referred to in last question and answer is offered in evidence by complainant's counsel, and the same is marked Complainant's Exhibit "C," E. W. R., N. P., sp. ex.

Q. 17. Do you find a comma after the word "therewith" in the claim set forth in the letter read by you in your last answer?

A. I do not.

Q. 18. After reading said letter of Alexander and Mason, what, in your opinion, was the intention of said solicitors, in writing said claim as contained in said letter of using the words "cast therewith," found in said claim? Did they mean to connect the words "cast therewith" with the "projection *a*," or with the words "interior screw-threads"? In answering this question, please give any reason you may have for any opinion you may express.

20 A. In my opinion, it was the intention of Alexander and Mason to connect the words "cast therewith" with the words "projection *a*," and not with the words "interior screw-threads," and I base this opinion on that part of the letter just read in which they state as follows: "In the patent of Wiard cited, the band is simply of sheet metal and has no projection cast with it," thereby giving by these underscored words special prominence to the fact that Covert's thimble had a projection cast with it, and this argument was written on the same sheet immediately following the amended claim. In the claim, as printed in the patent, I find a comma after the word therewith, which is not found in the draft of the amended claim.

Q. 19. Please read the claim of the letters patent to Covert in this suit leaving therefrom the words "cast therewith"?

A. I read from the Covert patent in suit as follows, making said omission: "The combination of the tube A, having a projection *a*, with interior screw-threads, and the screw C, having the eye D, and the sharp point *x*, for entering into the rope, all constructed as and for the purposes set forth."

Q. 20. State whether or not in your opinion the claim as read by you in your last answer, with the words "cast therewith" omitted therefrom, is a perfect claim, and one which covers the invention, and is entirely consistent with the specification of said patent.

A. It is; the words "cast therewith" in said claim are merely surplusage.

Q. 21. Please state whether or not a thimble for a hitching device constructed without a screw-thread in its projection would be an operative device for the purpose for which the thimble is intended.

A. Such a construction would not be an operative device;
21 where the screw is used it necessitates that a screw-thread be formed in the projection or boss on said thimble.

Q. 22. I now hand you a cattle tie made by the defendants and sold April 22, 1878, to G. H. & A. H. Ackerman, the same being marked in this case "Complainant's Exhibit D," also another cattle tie made by the defendant upon which are the letters "W. T. B." and offered in evidence and marked "Complainant's Exhibit E;" also, a thimble which I have cut from one of the defendants' goods marked "W. T. B.," which is now offered in evidence and marked "Complainant's Exhibit F," E. W. R., N. P., sp. ex.: please compare the thimbles upon said cattle ties, and also Complainant's Exhibit F with the invention shown, described and claimed in the

Covert patent in suit and state what similarities, if any, you find to exist between said thimbles upon said cattle ties and "Complainant's Exhibit F" and the invention claimed in the Covert patent in suit.

A. I find that the devices referred to in this last question are almost identical with the device shown in the Covert patent, and the only slight point of difference between them and the one shown in the Covert patent, which difference I consider an immaterial one, is that the extreme point of the conical end of the screw is very slightly rounded, and in my opinion this change in construction does not take the devices in question out of the scope of the claim of the Covert patent in suit.

Complainant's counsel offers for identification the thimble manufactured by the complainant under the patent in suit, and the same is marked by the examiner "complainant's thimble, for identification, E. W. R., N. P., sp. ex."

Q. 23. Please compare Complainant's Exhibits "D," "E" and "F" respectively, (the same being the thimbles as made by the defendants) with the "complainant's thimble," marked for
22 identification, and after such comparison, state what you find in regard to the point of the screw of the said thimbles.

A. I find that the points of the screws in the Exhibits "D," "E" and "F," so far as relates to the rounding of the extreme point of the cone, to be the same as is found in the screw of "complainant's thimble, marked for identification," and would further state that this rounding of the point would be produced, in my opinion, by the action of a tumbling barrel in the operation of cleaning the castings, if the screws were cast with a perfectly sharp point. I base my opinion from the fact that I have been familiar with the operation of iron founding, and have spent a great number of years of my life in connection with that business.

Q. 24. After the comparison which you have made in answer to question 22, the same being a comparison of the thimbles upon defendants' goods marked "Complainant's Exhibits" "D," "E" and "F" respectively, and the Covert patent in suit, please state whether or not, in your opinion, the defendants by making the thimbles now on "Complainant's Exhibits" "D" and "E" respectively and the thimble marked "Complainant's Exhibit F," have infringed the claim of letters patent to James C. Covert, dated April 6, 1875, No. 161,757, for "improvement in clasps, or thimbles for hitching devices" (being the patent upon which this suit is brought). In making your answer, please state your reason for any opinion you may express.

A. In my opinion, the defendants by making the devices shown in the exhibits in question have clearly infringed the claim of the Covert patent in suit, for the reason that the said devices are substantically identical with the device covered by the claim of said patent.

23 Q. 25. Assuming that the defendants in making the thimbles shown on "Complainant's Exhibit D" and "E" respect-

ively and the thimble marked "Complainant's Exhibit F," have cut the screw-threads found upon the interior of the projection of said thimbles, instead of casting them with said projection, would, or would you not be still of the opinion, that the defendants in making said thimbles had infringed the claim of the Covert patent in suit? In making your answer, please give your reason for any opinion you may express.

A. If the threads were cut in the thimble, the infringement, in my opinion, would be the same as if the threads were cast therein. It is a common and well-known expedient, in the manufacture of machinery, to cast screw-threads where they are required, and when so cast they are simply the equivalent of cut threads.

At this point the further taking of testimony was adjourned until Thursday, August 5, 1886, at 11 a. m., at the same place.

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany Co., N. Y.,
and Special Examiner.

On Thursday, August 5, 1886, the complainant appeared by counsel as before, and the testimony of Mr. Low was resumed as follows:

Q. 26. Mention having been made in the letter of Alexander and Mason to the Commissioner of Patents, which you have read in answer to question 16, to the "Wiard patent," I now hand you said patent of Wiard, bearing date June 9, 1868, No. 78849, issued to John Wiard for "improvement in cattle tie." Please state whether you have read and understand said "Wiard patent."

A. I have, and I do.

Q. 27. Please read the first claim of said "Wiard patent."

24 A. I read from said patent as follows: "1. The socket B, combined with the thumb screw C, when the said thumb screw is provided with a head, having a perforation at one or both ends, so far to one side from the centre or axis of the screw as that, when the tie is secured, the screw will be prevented from turning, substantially as herein set forth."

Q. 28. Please describe the invention as shown in the said Wiard patent, especially in relation to the adjustable socket therein mentioned, and also referred to in the claim read by you in your last answer.

A. As shown by the drawings of the Wiard patent there is nothing to indicate that there is any hole made through the "socket B" for the rope to pass through, nor anything to indicate that there is any greater thickness of metal where the "thumb screw" is inserted in said socket than there is at any other part of it. The drawing would indicate that the "socket B" was simply a cube with two of its sides deflected towards the "thumb screw." The description given in the specification is very vague and indefinite. The "thumb screw C" shown and described in the patent has an elongated or T-formed head with a hole through each end of it. The

end of said "thumb screw," as indicated by the dotted lines, is made flat and without any convexity.

Q. 29. By what means is the rope which passes through the "socket" in the Wiard patent, assuming that said rope actually does pass through such "socket," held, if held at all?

A. It is held by the frictional contact produced by the flat end of the "thumb screw," the inner end of the "thumb screw" not entering into the rope.

Q. 30. Please compare the Covert patent in suit, and the claim thereof, with the said Wiard patent and the claims thereof, and state after such comparison whether or not you find in the Covert patent the combination claimed in either of the claims of the Wiard patent.

A. I do not find in the Covert patent the combinations claimed in the claims of the Wiard patent.

Q. 31. I now hand you a socket in which is cast the following: "Pat'd June 9, 1868," and the thumb screw therein, which is marked the "Wiard socket for identification, E. W. R., N. P., sp. ex.," in this case. Please examine the same and compare it with the "thimble" and "screw" claimed in the Covert patent, and state what similarity, if any, you find to exist between said "Wiard socket" and "screw" and the "thimble" and "screw" described, shown and claimed in the Covert patent in suit.

A. There is a similarity existing between the form of the socket of the exhibit and the thimble shown in the Covert patent, but there is a material difference in the form of the screw shown in the exhibit referred to and the screw shown in the Covert patent. In the exhibit the screw is provided with an elongated head having a hole in each end and having on its inner end a cylindrical teat, having a slightly rounded end, which latter feature is not found in the Wiard patent. In the Covert patent the outer end of the screw is provided with a single eye placed centrally over the axis of the screw and its inner end is provided with a conical point for entering the body of the rope.

Q. 32. Please compare the "screw" of the "Wiard socket" with the "screw" of the Wiard patent, and state if you find any dissimilarity between the same. And please state why in your opinion the inner end of the thumb screw in the Wiard exhibit is apparently a little rounded.

A. In the Wiard patent the screw-threads as shown in figure 2, are carried to the extreme inner end of the screw, and the inner end of the screw is perfectly square or flat. In the "Wiard exhibit" the screw-thread is not carried to the end of the screw, which is made in the form of a teat having a slightly rounded end, and this convexity of the end is, in my opinion, made for the purpose of facilitating the drawing of the patent from the mould in which the screw is cast, or in other words to give the pattern what is technically known as suitable draft.

Q. 32½. I now hand you a socket, known as the Sargent socket (marked by the examiner "Sargent-Hull socket, for identification;

E. W. R., N. P.; sp. ex."). Please examine such socket and state its construction, use and operation.

A. The socket is made in two parts, divided longitudinally, one of the parts being provided with a projecting eye, and the two parts being held together by means of slot-headed screws, the two parts when placed together forming a socket to be clamped upon a rope, the concave faces of said parts being provided with spiral ribs, which are designed to be pressed into the body of the rope, when the two parts are secured together by means of the slot-headed screws before referred to.

Q. 33. Please compare the said "Sargent-Hull socket" with the thimble shown, described and claimed in the Covert patent in suit, and after such comparison, state what similarities and differences you find between the same.

A. Beyond the purposes for which they are intended, I find no similarity between them. The "Sargent-Hull socket" is intended to be clamped upon a rope, and in order to shift it from one part of the rope to another, it requires the use of a screw-driver to effect that purpose, and in case that the rope upon which it is to be used is slightly smaller than the bore of the socket, the device is a perfectly useless one, for the reason that it cannot be securely
27 clamped to the rope. In the Covert socket, this defect is remedied for the reason that the pointed screw can penetrate into the rope and hold the socket securely thereon, whether the diameter of the rope is smaller than the bore of the socket or not.

Q. 34. Having in view the said Wiard patent, the said "Wiard socket and screw," and the said "Sargent-Hull socket," please state whether or not, in your opinion, there is any invention in the thimble as shown, described and claimed in the Covert patent, in suits; and if you say there is invention, please state what in your opinion is the novelty of the invention, and give any reason you may have for the opinion you may express.

A. In my opinion, in view of the devices referred to, there is novelty in the device covered by the Covert patent, and the novelty of that device consists in making the outer end of the screw with a single eye placed centrally over the axis of the screw and giving to the inner end of the screw a coniform point, by means of which the screw is enabled to enter the body of the rope and give a stability to the socket thereon. By reason of the single eye placed centrally over the axis of the screw, the liability of the screw to become slackened is greatly lessened, and I find by experiments made under my supervision, that when the screw of the Covert device is properly inserted in the body of the rope that the socket will be securely held in place after the screw has been turned backward from six to eight revolutions, according to the size of the rope upon which the thimble is placed, while the Exhibit "Wiard Socket and Screw" with one or two backward revolutions of the screw, according to the size of the rope upon which the "Wiard socket" is placed, the socket can be easily slipped from its position on the rope. Aside from this the screw of the "Wiard socket" is liable to be
28 turned back when the device falls upon or strikes any hard

substance when the tie is detached from the animal; and where the snap-hook is caught on the wrong end of the head of the screw. This defect seems to have been well understood by the patentee. For in the specification of his (Wiard's) patent, he says that when the snap is in the hole in the head of the screw nearest the hook, a strain is brought to bear upon the tie that serves to firmly retain the thumb-screw in its proper position, and that "so long as the tie is around the animal's neck or horns, the screw in the socket cannot be loosened." This quotation leads me to infer, that Mr. Wiard knew that when the hook was fastened in the end of the head of the screw that was farthest from said hook, or when the tie was off from said animal's head or horns, the screw was liable to become loosened. Constant care and attention is required in using Wiard's socket and screw to see that all times the screw is firmly set against the rope, and as an animal has to be hitched at night and sometimes in the dark, as well as in the day and in the light, it is a matter of great care to the owner of the animal to see that the socket is properly secured, for in case such socket is not properly secured, the size of the loop of the rope is decreased and the animal is strangled when the rope has been thrown around its neck. In regard to the "Sargent-Hull socket," I have already in a former answer expressed an opinion of the differences in construction and the difficulties attending it s use.

Q. 35. In your opinion is or is not the invention, claimed in the Covert patent, in suit, anticipated by either socket and screw shown and claimed in the said Wiard patent, or by the "Wiard socket and screw," marked herein for identification, or by the "Sargent-Hull socket," also marked herein for identification?

29 A. In my opinion, the invention covered by the Covert patent is not anticipated by either of the devices referred to in this last question.

WILLIAM H. LOW.

Subscribed and sworn to before me—

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany Co., N. Y.,
and Special Examiner.

The further taking of testimony herein was at this point adjourned until Friday, August 6, 1886, at 10 a.m., at the same place.

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany Co., N. Y.,
and Special Examiner.

Friday, August 6, 1886, the complainant appeared as above, by William H. King, of counsel, at his office, No. 31 North Pearl street, and the further taking of testimony was resumed, as follows, no one appearing for the defendants:

HALBERT D. HULL, called as a witness for the complainant, and being first duly sworn by the examiner, made answer to interrogatories propounded by Mr. King, complainant's counsel, as follows, to wit:

Q. 1. What is your name, age, residence and occupation?

A. Halbert D. Hull, fifty-six years old; residence, No. 29 Seventh street, Troy, New York; occupation, selling hardware and agricultural implements.

Q. 2. Are you a member of any firm; if so, of what firm?

A. No, sir; I run my own business, under the name of H. D. Hull.

Q. 3. How long have you been in business as hardware dealer?

A. I have been in business as such for twenty-four years.

30 Q. 4. I now hand you a "cattle tie-iron," known as the "Sargent-Hull cattle tie-iron." Have you ever seen similar devices; if so, about what time, and where?

A. I have seen similar devices, I should think, about ten years ago, at Troy, New York, in my store. I bought and sold them there.

Q. 5. Have you bought and sold the said "Sargent-Hull cattle tie-iron" during the last ten years?

A. I don't think I have. I have no recollection of buying them since the Covert thimble came out, which is about ten years ago.

Q. 6. Did you, or did you not find any difficulty in selling the said "Sargent-Hull cattle tie-iron"?

A. I did find difficulty; yes, sir.

Q. 7. What was such difficulty which you so found?

A. The difficulty of fastening the tie to the rope so as to secure it against slipping, endangering the choking of the animal. The difficulty in fastening the "iron" to the tie was, in getting a rope of proper size. If the rope was too large, the screws were not long enough to hold it together. If the rope was too small it would slip through, and by reason of the curve in the iron there was a difficulty in getting the rope into the iron. If the iron slipped at all it would cause the rope to shirr up and choke the animal. Another difficulty I found in selling the said "iron" was that the "Covert thimble" came into market and was considered far better for the purposes, and displaced the "Sargent-Hull cattle tie-iron" with me.

Q. 8. How did you manage to dispose of the "Sargent-Hull cattle tie-iron" after the "Covert thimble" come upon the market?

A. By manufacturing ties from rope that we would buy, and putting the "Sargent-Hull cattle tie-iron" on them myself.

31 Q. 9. Have you ever bought and sold what is known as the "Covert thimble," made under the Covert patent, in this suit, bearing date April 6, 1875, marked in this case "Complainant's Exhibit B"?

A. Yes, sir.

Q. 10. When did you commence to buy and sell the said "Covert thimble"?

A. My impression is that it was some eight or ten years ago.

Q. 11. Have you bought and sold the said "Covert thimble" exclusively during the past eight or ten years?

A. No, sir.

Q. 12. What other "thimble" have you bought and sold during the past eight or ten years?

A. I have bought thimbles from Sargent & Co., the defendants in this case, which has the appearance of "Covert's thimble."

Q. 13. Was the thimble that you bought of the defendants, as stated by you in your last answer, similar to the thimble now on exhibit in this case and marked "Complainant's Exhibit F, E. W. R., N. P., sp. ex."?

A. It was similar to that thimble. I think I commenced to buy them about four years ago.

Q. 14. Please state why you bought the thimble like "Complainant's Exhibit F" of defendants?

A. Because I could buy the thimble like "Complainant's Exhibit F" of the Sargents cheaper than I could buy the "Covert thimble" of Mr. Covert.

Q. 15. I now hand you the socket known as the "Wiard socket" and screw therein, which have been marked herein for indentification. Please state your opinion as to the practicability of the said socket for use upon horse or cattle ties? Before answering this question please state also what experience you have had in
32 the manufacture of horse and cattle ties, so that the court may judge of your fitness and qualification to make an answer to said question.

A. I have had a man in my employ for years who makes horse and cattle ties under my supervision and direction. My opinion of the "Wiard socket and screw" is that it is not good for anything.

Q. 16. Please give your reasons why the "Wiard socket and screw" is not good for anything when used upon cattle and horse ties?

A. My first objection is to the flat end of the screw where it strikes the rope. This should be pointed so as to penetrate the rope, whereas the end of this, the "Wiard screw," being flat and smooth, would not hold the rope sufficiently to prevent slipping. Another reason is, that a slight turn on the end of the screw when the tie is on an animal's neck might loosen it enough so that it would slip and choke the animal by slipping and decreasing the size of the loop.

HALBERT D. HULL.

Subscribed and sworn to before me—

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany Co., N. Y., and Special Examiner.

GILBERT H. ACKERMAN, called as a witness for the complainant, and being first duly sworn by the examiner, did testify and make answer to interrogatories propounded by Mr. King, of counsel for complainant, as follows, to wit:

Q. 1. What is your name, age, residence and occupation?

A. Gilbert H. Ackerman, age fifty-four years, residence 528 Madison avenue, Albany, New York; and occupation that of a hardware dealer, at 384 Broadway, Albany, N. Y.

33 Q. 2. Are you a member of any firm, and if so, of what firm?

A. Of the firm of G. H. and A. H. Ackerman.

Q. 3. How long have you been in business as a member of that firm?

A. A year and a half.

Q. 4. What business were you in the year 1878, and under what firm name?

A. In the hardware business, under the firm name of Gilbert H. Ackerman.

Q. 5. Did you in the year 1878 purchase any goods known as "cattle ties" from the defendants, Sargent & Co., of New York city?

A. Yes, sir.

Q. 6. Had the cattle tie that you said you bought of Sargent & Co., in 1878, a thimble thereon, at the time of the purchase thereof by you?

A. Yes, sir, it had.

Q. 7. I now hand you a cattle tie bearing a tag upon which is written the name G. H. Ackerman. In whose handwriting is the signature G. H. Ackerman, upon said tag?

A. My own.

Q. 8. Is this one of the cattle ties which you bought of the defendant?

A. It is.

Q. 9. How do you recognize it as a cattle tie bought by you of the defendants, Sargent & Co.?

A. By the letter V which I filed in the snap myself.

Q. 10. When did you file the letter V in the snap?

A. At the time I delivered the same to Mr. King, the solicitor for the complainant herein, about the 16th day of November, 1885.

Q. 11. What was the names of the firm of the defendants at the time they sold said cattle tie with others to you?

34 A. Sargent & Co.

Q. 12. The thimble now on said cattle tie, concerning which you testified is the same as it was when it was delivered by Sargent & Co., to you, is it not?

A. To the best of my knowledge and belief the cattle tie is in the same condition as when it was delivered to my firm by said Sargent & Co.

Q. 13. Do you remember how many cattle ties similar to the one now before you, you bought of said Sargent & Co.?

A. It was two dozen.

Q. 14. Do you know what you paid the defendants, Sargent & Co., for said cattle ties?

A. Four dollars and forty-five cents.

Complainant's solicitor offers cattle tie referred to by this witness in evidence, and the same is marked Complainant's "Exhibit D;" E. W. R., N. P., sp. ex.

G. H. ACKERMAN.

Subscribed and sworn to before me—

[L. S.] EDWARD W. RANKIN,

Notary Public, Albany Co., N. Y., and Special Examiner.

CHARLES H. TURNER, called as a witness for the complainant and being first duly sworn by the examiner, testified and made answer to interrogatories propounded by Mr. King of counsel for complainants, as follows, to wit:

Q. 1. What is your name, age, residence and occupation?

A. Charles H. Turner, residence 104 State street, in city of Albany, aged thirty-eight years, occupation hardware buyer.

Q. 2. For whom are you a hardware buyer?

A. For Maurice E. Viele, of Albany, N. Y.

35 Q. 3. For how long a time have you been a buyer for Maurice E. Viele, of Albany, N. Y.?

A. Fourteen years.

Q. 4. What have been, and what are your duties as buyer for said Maurice E. Viele?

A. My duties are and have been the ordering and purchasing of goods for the house, and as a necessary qualification I have to be acquainted with the goods we are handling, and keep posted and familiar with new goods in our line of business as they are introduced into the market.

Q. 5. I now hand you what is known as the "Wiard socket and screw," which has been marked herein for identification. Have you, as buyer for Maurice E. Viele, bought, and has Mr. Viele ever sold a socket and screw like the Wiard socket and screw, like the one which you have in your hands?

A. I have bought them, and they were sold in Mr. Viele's establishment.

Q. 6. From whom were the "Wiard socket and screw" bought by you?

A. The Stanley Rule and Level Company, of New York, and New Britain, Connecticut.

Q. 7. State as near as you can about when you or Mr. Viele last bought "sockets and screws" similar to the "Wiard socket and screw" now in your hands.

A. About ten years ago.

Q. 8. I now hand you what is known as the "Sargent-Hull cattle tie-iron," marked for identification herein. Have you, as a buyer for Maurice E. Viele, bought, and has Mr. Viele ever sold a "cattle tie-iron," similar to the "Sargent-Hull cattle tie-iron" which you now have in your hands?

A. I have bought them, and he has sold them.

Q. 9. From whom did your purchase the said "Sargent-Hull cattle tie-iron"?

A. From Sargent & Co., the defendants herein.

36 Q. 10. About when did your firm last buy the so-called "Sargent-Hull cattle tie-iron"?

A. To the best of my recollection about twelve years ago.

Q. 11. Has Mr. Viele now in stock either the so-called "Wiard socket and screw," or the so-called "Sargent-Hull cattle tie-iron," samples of both of which are now before you?

A. He has not.

Q. 12. Why did you, as buyer for Mr. Viele, or did Mr. Viele, cease to buy either the "Wiard socket and screw," or the so-called "Sargent-Hull cattle tie-iron;" samples of both of which are now before you?

A. Other goods of this character were offered to us and considered better and more practical, and which we adopted in place of those; in other words other goods displaced them.

Q. 13. Please state what goods you referred to in your last answer as being considered better and more practical, and which displaced the "Wiard socket and screw," and the "Sargent-Hull cattle tie-iron," and which you also say your house adopted in place of those.

A. The "Covert thimble," made under the patent dated April 6, 1875, being the patent in suit.

CHARLES H. TURNER.

Subscribed and sworn to before me—

[L. S.] EDWARD W. RANKIN.

Notary Public, Albany Co., N. Y., and Special Examiner.

JAMES BYRNE, called as a witness for complainant, and being first duly sworn by the examiner, testified and made answer to the interrogatories propounded by Wm. H. King, of counsel for the complainant, as follows, to wit:

37 Q. 1. What is your name, age, residence and occupation?

A. James Byrne, age fifty-four years; I reside at No. 3 Park place, Albany, New York; occupation, hardware.

Q. 2. Have you ever been a member of any firm as hardware dealers, and if so, of what firm?

A. I was a member of the firm of Edward Wilson & Co. for nine years, and of Byrne & Fitzsimons for seven years. Both firms did business at the city of Albany, N. Y.

Q. 3. When did the firm of Byrne & Fitzsimons dissolve?

A. In 1880.

Q. 4. With whom are you now connected?

A. With the firm of Corning & Co., dealers in hardware, Albany, N. Y., who are the successors of the former firm of Byrne & Fitzsimons.

Q. 5. For how long a time have you been with the firm of Corning & Co.?

A. For five years; five years last March.

Q. 6. I now hand you what is known as the "Wiard socket and screw," which has been marked herein for indentification. Had either of your firms of Byrne & Fitzsimons, or Edward Wilson & Co., ever bought and sold a socket and screw like the "Wiard socket and screw" now in your hands?

A. Yes, sir: the firm of Edward Wilson & Co. bought and sold them.

Q. 7. From whom were the said "Wiard socket and screw" purchased by your said firm of Edward Wilson & Co.?

A. From the Stanley Rule and Level Company, of New York city, and of New Britain, Connecticut.

Q. 8. State as near as you can about when your firm of Edward Wilson & Co. last bought the "Wiard socket and screw," similar to the one you have in your hand?

38 A. I do not think we bought any within twelve years. The firm of Byrne & Fitzsimons succeeded the firm of Edward Wilson & Co., and took their goods, Edward Wilson having died, and the remaining partners continued the business under the firm name of Byrne & Fitzsimons, and took the accounts and stock of the former firm of Edward Wilson & Co., and the firm of Byrne & Fitzsimons never bought any of the "Wiard socket and screw," to best of my knowledge.

Q. 9. Why did not the firm of Edward Wilson & Co. continue to buy, or why did not the firm of Byrne & Fitzsimons buy the "Wiard socket and screw"?

A. Because we considered it unsaleable, and we changed to the "Covert thimble," because the trade demanded it, and we carried some of the "Wiard sockets and screws" in stock for years, because we could not sell them.

Q. 10. To what thimble do you refer in your last answer when you say the "Covert thimble." Do you mean the thimble shown in the drawing of the Covert patent, dated April 6, 1875 (being the patent in suit), which I now show you, where the screw is shown as having a sharp point?

A. I do.

Q. 11. Have you heard any objections made to the use of the "Wiard socket and screw" on cattle and horse ties?

A. Yes, I have heard that they would slip on account of the end of the screw being blunt.

Q. 12. Whom have you heard make the objection mentioned in your last answer?

A. Customers and users of horse and cattle ties and the trade generally.

Q. 13. What, in your opinion, is the practicability of the "Wiard socket and screw"?

39 A. I do not think — it all practicable; the screw is liable to be turned by reason of the extension of the head of the screw by a knock, and one turn of the screw will loosen it.

Q. 14. Have any of your firms ever bought any of the "Covert thimbles"?

A. We have continuously, and the firm of Corning & Co. have them in stock now. There is continual sale for them.

JAMES BYRNE.

Subscribed and sworn to before me—

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany Co., N. Y., and Special Examiner.

The further taking of testimony herein was at this point adjourned until Monday, August 9, 1886, at 2:30 p. m., at the same place.

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany Co., N. Y., and Special Examiner.

On Monday, August 9, 1886, at No. 31 North Pearl street, Albany, N. Y., the complainant appeared by William H. King, Esq., of counsel, and the taking of testimony for complainant was resumed in pursuance of adjournment, at two o'clock and thirty minutes in the afternoon, as follows:

FREDERICK A. LEEDS, called as a witness for complainant, and being first duly sworn by the examiner, testified and made answers to the interrogatories propounded by William H. King, of counsel for complainant, as follows, to wit:

Q. 1. What is your name, age, residence and occupation?

A. Frederick A. Leeds; age, thirty-four years; residence, 127 Eighth street, Troy, N. Y. My occupation is that of a buyer for J. M. Warren & Co., dealers in hardware, steel and iron, at Nos. 245 and 247 River street, Troy, N. Y.

Q. 2. For how long a time have you been employed by J. M. Warren & Co.?

A. For fourteen or fifteen years last past, continually.

Q. 3. For how long a time have you been a buyer for said J. M. Warren & Co.?

A. That I cannot give exactly; nine or ten years last past, continuously.

Q. 4. What have been, and what are your duties as buyer for J. M. Warren & Co.?

A. Buying and ordering goods for the house.

Q. 5. I now hand you what is known as the "Wiard socket and screw." Have you ever seen devices similar to that?

A. I have, in the store of J. M. Warren & Co., at Troy, N. Y.

Q. 6. Have you ever seen that particular "socket and screw" which you have in your hand?

A. I should say that I had, in the store of J. M. Warren & Co., Troy, N. Y.

Q. 7. Is there anything upon it by which you identify it as having been seen by you in the store of J. M. Warren & Co., Troy, N. Y.?

A. I should say it was the same, by reason of the file-marks in each loop.

Q. 8. By whom were the file-marks made in each loop in said socket and screw?

A. By James C. Covert, the complainant in this suit, who is now present.

Q. 9. In whose presence did Mr. James C. Covert make the file-marks in each loop of said "Wiard socket and screw"?

A. In my presence.

Q. 10. Where, and upon what day did Mr. James C. Covert make the file-marks in each loop of said "Wiard socket and screw"?

41 A. He did so at the store of J. M. Warren & Co., Troy, N. Y., in the latter part of July, 1886.

Q. 11. What did you do with said "socket and screw" after Mr. Covert had made said file-marks thereon?

A. Mr. Covert made the file-marks and called my attention to them, and I gave said "socket and screw" to Mr. Covert.

Q. 12. Where did you obtain the "Wiard socket and screw" which you delivered to Mr. James C. Covert, the latter part of July, 1886, and which has file-marks in each loops.

A. From a box, bearing a label of the "Stanley Rule and Level Company," containing other sockets and screws of the same kind, which was in the store, and a part of the stock of said James M. Warren & Co.

Q. 13. State, if you know of your own knowledge, how long the "sockets and screws," from which you took the "socket and screw" which you now have in your hand, had been in the store and stock of the said J. M. Warren & Co.

A. To my own knowledge, nine or ten years.

Q. 14. What is the reason the lot of sockets and screws like the "Wiard socket and screw" which you now have in your hands, has remained in the stock and store of said J. M. Warren & Co. for so long a time?

A. Because there was no sale for the same.

Q. 15. Has your firm ever bought and sold what is known as the "Covert thimble"?

A. Yes; they have bought and sold them.

Q. 16. State whether or not there is a great and continuous demand for the said Covert thimble.

A. There is a sale, more or less, all the time for them, and has been ever since we first commenced to buy them of the Covert Manufacturing Company.

The "Wiard socket and screw" referred to by this witness,
42 offered in evidence by Mr. King, of counsel for complainant, and the same is marked by the examiner "Complainant's Exhibit H, E. W. R., X. P., sp. ex."

Q. 17. Since you have been a buyer for J. M. Warren & Co., please state whether or not said James M. Warren & Co. have bought of any person, firm or corporation any of the so-called

"Wiard socket and screws" made under the patent of John Wiard, dated June 9, 1868.

A. No.

FREDERICK A. LEEDS.

Subscribed and sworn to before me—

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany Co., N. Y., and Special Examiner.

EUGENE S. OSBORN, called as a witness for complainant, and being first duly sworn by the examiner, testified and made answers to the interrogatories propounded by William H. King, of counsel for complainant, as follows, to wit:

Q. 1. What is your name, age, residence, and occupation?

A. Eugene S. Osborn; age, twenty-nine years; residence, 224 North Second street, Troy, N. Y.; occupation, salesman for the firm of A. E. Bonesteel, dealer in hardware, No. 313 River street, Troy, N. Y.

Q. 2. For how long a time have you been a salesman for said A. E. Bonesteel?

A. For ten years last past, continuously?

Q. 3. I now hand you what is known as the "Sargent-Hull cattle tie-iron." Have you ever before this seen devices similar to that?

A. I have.

Q. 4. Where and when?

A. At the store of A. E. Bonesteel, 313 River street,
43 Troy, N. Y., four days ago, and for a long time before that.

Q. 5. Have you ever seen that particular "Sargent-Hull cattle tie-iron," which you have now in your hand?

A. I have.

Q. 6. When prior to this date, and where, did you see said "Sargent-Hull cattle tie-iron," which you now have in your hand?

A. August 5, 1886, at said store of A. E. Bonesteel.

Q. 7. Is there anything upon or about said "Sargent-Hull cattle tie-iron" by which you can identify it, as having been seen by you at said store of A. E. Bonesteel, August 5, 1886?

A. There is; there are marks at each end made by a sharp instrument.

Q. 8. State, if you know, by whom the marks upon said "cattle tie-iron" were made.

A. By Mr. James C. Covert, complainant in this case, who is now present.

Q. 9. When, where, in whose presence, and under what circumstances, did the said James C. Covert place the said marks upon the said "Sargent-Hull cattle tie-iron"?

A. August 5, 1886, at the store of A. E. Bonesteel, in my presence, that I might recognize it when I saw it again, I having given it to him out of the stock in the store of A. E. Bonesteel.

Q. 10. Where did you obtain said "Sargent-Hull cattle tie-iron"?

A. From a lot of similar "cattle tie-irons" which were in the stock at the store of said A. E. Bonesteel.

Q. 11. State how long the lot of "Sargent-Hull cattle tie-irons" from which you took the one you now have in your hand, had been in the stock and store of A. E. Bonesteel.

44 A. As long as I remember; I think as long as I have been there; I do not think any have come into the store since I have been there as salesman.

Q. 12. State, if you know, why the said lot of "Sargent-Hull cattle tie-irons" remained in stock of A. E. Bonesteel so long a time?

A. Because there was no sale for them.

Q. 13. Why was there no sale for them?

A. Because there are other devices which are better adapted for the purposes than they are, and which came into market and displaced them.

Q. 14. What other devices came into the market which are better adapted for the purposes for which they are used?

A. The Covert thimble made by the Covert Manufacturing Company, of West Troy, N. Y.

Q. 15. Has the firm of A. E. Bonesteel been accustomed to buying and selling the "Covert thimble"?

A. They have bought and sold them for a number of years, and are now buying and selling them, and have sold quantities of them.

The "Sargent-Hull cattle tie-iron" referred to by witness is now offered in evidence by counsel for complainant, and the same is marked "Complainant's Exhibit I. E. W. R., N. P., sp. ex."

EUGENE S. OSBORN.

Subscribed and sworn to before me—

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany Co., N. Y., and Special Examiner.

The further taking of testimony in this cause was at this point adjourned until Tuesday morning, August 10, 1886, at 10.30 a. m., at the same place.

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany Co., N. Y., and Special Examiner.

45 Tuesday, August 10, 1886, the complainant appeared by William H. King, of counsel, defendants not appearing, and testimony was resumed, as follows:

JAMES C. COVERT, called as a witness for the complainant, and being first duly sworn by the examiner, testified and made answer to interrogatories propounded to him by WILLIAM H. KING, complainant's solicitor, as follows, to wit:

Q. 1. What is your name, age, residence and occupation?

A. James C. Covert; aged fifty-one years; residence, West Troy, N. Y.; occupation, a manufacturer.

Q. 2. Are you a member of any firm; if so, of what firm; where located; and what is such firm's business?

A. I am a member of the firm of Covert Manufacturing Company, of West Troy, N. Y.; they manufacture hardware.

Q. 3. Are you the complainant in this case?

A. I am.

Q. 4. Are you the patentee named in letters patent No. 161,757, dated April 6, 1875, issued to James C. Covert for "an improvement in clasps, or thimbles for hitching devices"?

A. I am.

Q. 5. Who was the owner of the said letters patent at the time this suit was brought, and who is now the owner thereof?

A. I was, and I am.

Q. 6. Have you ever made any assignment of, or granted any interest in, said letters patent to any one?

A. I have not.

Q. 7. Have you put the invention described in said letters
46 patent in practical operation, and made and sold goods involving the invention claimed in said letters patent?

A. I and my firm have constantly since the granting of said letlets patent made and sold, and are now making and selling thimbles made in the manner described and claimed in said letters patent. We have sold thousands of gross of such thimbles, both separately to be used with snap-hooks, and also put upon cattle and horse ties every year.

Q. 8. Have you licensed any person or firm to make and use the invention described and claimed in said letters patent in suit?

A. No.

Q. 9. Why have you not licensed others to make the invention described and claimed in said letters patent?

A. First, because I and my firm have been and are still able and prepared to fill all orders for such goods. Second, by controlling the manufacture ourselves, we had a sure means of detecting infringements.

Q. 10. Have you ever licensed or granted any permission to the defendants to make thimbles for hitching devices under the letters patent in suit?

A. I never have.

Q. 11. Can you produce a sample of the thimble you and your firm have made under the letters patent in suit?

A. I can, and I now produce it.

Sample of the thimble referred to in last answer offered in evidence by complainant's solicitor, and the same is marked "Complainant's Exhibit G," E. W. R., N. P. and sp. ex.

Q. 12. How have been, and how are the screw-threads found in the interior of the projection of the "thimbles" made by your firm under said letters patent formed in such projection?

A. They have always been, and are now cut therein.

47 Q. 13. Have you, or your firm, ever been in the habit of

casting the screw-threads in the interior of the projection of the "thimbles" made under the patent in suit?

A. No.

Q. 14. Did you file a model of the device mentioned and claimed in your patent in suit in the United States Patent Office the time you filed your application for said letters patent?

A. I did.

Q. 15. Of what material was said model made?

A. Of iron.

Q. 16. Please state in what manner the screw-threads in the interior of the projection of the thimble were formed in said model.

A. By being cut in the interior of the projection of such model.

Q. 17. Have, or have not, your firm advertised the sale of the thimbles made under the patent in suit?

A. We have advertised the sale of such thimbles very largely in the usual hardware, and saddlery hardware papers in the United States, and also in papers devoted to other trades.

Q. 18. How did you come to invent the device called a "clasp or thimble for hitching devices," described and claimed in the patent in suit?

A. While on the road selling snaps and other goods of our manufacture, I heard so many complaints of the only devices used for the purpose of hooking snaps into, in cattle and horse ties at that time, and being requested by some customers to get up something that would overcome the objections to such devices which they explained to me, I realized the importance of such a device, and also the profits that would accrue to any one who got up such an invention by the sale of such a device, that I spent a large amount of time, money and thought in experimenting to
48 get up such a device as would overcome all difficulties, and I finally, after a great deal of thought, and testing many experiments which I made, produced the invention shown in the patent in suit and had it patented under said patent.

Q. 19. What were the devices referred to by you in your last answer as having been used prior to your invention of the thimble shown in the patent in suit?

A. One was known as the "Sargent-Hull cattle tie-iron," and one by the name of "Wiard."

Q. 20. State, if you know, who made and sold the "Sargent-Hull cattle tie-iron?"

A. They were made and sold by the defendants in this suit. Hull was the name of the patentee.

Q. 21. State, if you know, who made and sold the so-called "Wiard" device?

A. The Stanley Rule and Level Co., of New York city, and New Britain, Conn.

Q. 22. Do you find among the exhibits of the complainant a sample of either the "Sargent-Hull cattle tie-iron," or the "Wiard socket"?

A. I do.

Q. 23. Please point out each of such exhibits?

A. Complainant's Exhibit "I" is the "Sargent-Hull cattle tie-iron," and Complainant's Exhibit "H" is the "Wiard socket."

Q. 24. Have you seen the said Complainant's Exhibit "H" and "I" before?

A. Yes, sir.

Q. 25. Please state where, before this date, you saw each of such exhibits?

A. Complainant's Exhibit "H" I saw in the store of J. M. Warren & Co., of Troy, N. Y., and I obtained it from Frederic A. Leeds, the buyer of said firm, and it bears file-marks in each loop made by me in said Leeds' presence, on July 27, 1886. "Complainant's Exhibit I" I saw in the store of A. E. Bonesteel,
49 Troy, N. Y., and I obtained the same from Eugene S. Osborn on August 5, 1886, and it bears marks made by me in the presence of said Osborn.

Q. 26. Please state what objections were made by the persons who wanted you to invent something which would take the place of devices like Complainant's Exhibit "I" and "H," and known as the "Sargent-Hull cattle tie-irons" and the "Wiard socket," respectively, to both the "Sargent-Hull cattle tie-iron" and the "Wiard socket."

A. They explained that in using the "Sargent-Hull cattle tie-irons" the rope had to be of uniform size, for if the rope was too large the device could not be clamped on the rope, and if it was too small it would slip through and choke the animal; also, if it needed adjustment to a different-size loop it could not be done without a screw-driver to remove it from and replace it on the rope; and also, that the two small screws were liable to work out and be lost. As to the "Wiard socket," it was considered very unsafe, as the screw answered only as an insecure clamping device which often worked loose allowing it to slip.

Q. 27. State if you know, whether or not the defendants in this suit, at the time of the commencement hereof, were copartners; if you answer yes, please state their firm name, and where they do business?

A. They are; their firm name is Sargent & Co., doing business in Chambers street, near Broadway, New York city, as hardware dealers.

Q. 28. How do you know that defendants were and are copartners under their firm name of Sargent & Co.?

A. By the defendants having admitted that fact in the evidence taken in another suit brought by myself against them, in this court, for an infringement of a patent belonging to me, for "rope clamps."

50 Q. 29. Have the defendants been accustomed to marking "cattle ties" and "horse ties" made by them like Complainant's Exhibit "D" and "E," as made under any letters patent?

A. They have, by attaching to said "cattle ties" a tag upon which was printed the words: "Patented May 13, 1879."

Q. 30. Can you produce one of such tags?

A. I can, and I do.

(Witness refers to "Complainant's Exhibits.")

Q. 31. Have you personally examined the Official Gazette of the United States Patent Office, issued May 13, 1879, for patents for an improvement for either "thimbles" or "rope clamps," and after such an examination were you able to find any patent granted on that day for either of the improvements?

A. I have made such an examination and found none.

JAMES C. COVERT.

Subscribed and sworn to before me—

[L. S.] EDWARD W. RANKIN,

Notary Public, Albany Co., N. Y., and Special Examiner.

WILLIAM L. BURGESS, called as a witness for the complainant, and being first duly sworn by the examiner, testified and made answer to interrogatories propounded to him by WILLIAM H. KING, complainant's solicitor, as follows, to wit:

Q. 1. What is your name, age, residence, and occupation.

A. William L. Burgess; age twenty-nine years; residence, No. 1 Myrtle avenue, Albany, N. Y.; occupation, hardware dealer.

Q. 2. Are you a member of any firm; and if so, of what firm, under what name, in what business, and where located?

51 A. I am a member of the firm of William T. Burgess & Son, doing business under that name, at No. 146 South Pearl street, Albany, N. Y., in the hardware business.

Q. 3. How long have you been a member of the firm of William T. Burgess & Son?

A. Since January 1, 1886.

Q. 4. By whom were you employed prior to January 1, 1886, and in what capacity?

A. By the said William T. Burgess, at No. 146 South Pearl street, Albany, N. Y., as his buyer.

Q. 5. How long have you been employed by said William T. Burgess as his buyer?

A. For five years prior to January 1, 1886, continuously.

Q. 6. Have you during the past five years bought any cattle ties from the defendants for said William T. Burgess?

A. I have.

Q. 7. Can you produce a sample of the cattle ties which you bought for William T. Burgess from the defendants, and which the defendants delivered to the said William T. Burgess?

A. I can, and I now produce seven.

Q. 8. Did the bundle of cattle ties sold and delivered by the defendants to W. T. Burgess have the tag thereon which is now attached to the bundle of cattle ties which you have in your hands?

A. It had.

Q. 9. When were the said cattle ties sold and delivered by said defendants to said William T. Burgess?

A. During the past year.

Complainant's counsel offers in evidence the seven cattle ties produced by the witness in answer to question No. 7 above, and the

same are marked Complainant's Exhibit "J," "K," "L," "M," "N," "O," "E." E. W. R., N. P., sp. ex.

52 Complainant's counsel offers in evidence the tag referred to by the witness in answer to question No. 8 above, and the same is marked "Complainant's Exhibit Q," E. W. R., N. P., sp. ex.

WILLIAM L. BURGESS.

Subscribed and sworn to before me—

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany Co., N. Y., and Special Examiner.

STATE OF NEW YORK, }
City and County of Albany, } *ss.:*

I, Edward W. Rankin, a notary public in and for said county of Albany, and State of New York, duly commissioned and qualified as such, do hereby certify, that on the several days named in the foregoing deposition, I was attended at the office of William H. King, counsel for complainant, at No. 31 North Pearl street, in said city of Albany, N. Y., by said counsel for complainant and the witnesses in said deposition mentioned. That the above-named witnesses, William H. Low, Halbert D. Hull, Gilbert H. Ackerman, Charles H. Turner, James Byrne, Frederick A. Leeds, Eugene S. Osborn, James C. Covert and William L. Burgess, were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions were subscribed by said witnesses, as above set forth, in my presence, and said depositions reduced to writing by myself in the presence of said witnesses, and read to them by me, and were taken at the times and places therein mentioned and specified in the foregoing notice, and continued from day to day as above set forth. That the several exhibits mentioned in said depositions were introduced in evidence and identified by my signature. That I am not counsel, attorney, or retained by
53 either party, or otherwise interested in the event of this suit.

I further testify that the fees for taking such depositions amounting to the sum of $78.80 have been paid to me by complainant's counsel, and that the amount thereof is just and reasonable for the services performed.

In testimony whereof, I have hereunto set my hand and my notarial seal of office this 11th day of August, 1886.

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany Co., N. Y., and Special Examiner.

United States Circuit Court, Southern District of New York.

JAMES C. COVERT
ag'st
JOSEPH B. SARGENT and GEORGE H. SARGENT. } In Equity. 2nd Suit.

ALBANY, N. Y., *September* 29, 1886.

Met pursuant to an agreement for the cross-examination of William H. Low.

Present: Wm. H. King, Esq., of counsel for the complainant; John K. Beach, Esq., of counsel for the defendants.

Cross-examination of WILLIAM H. LOW by JOHN K. BEACH, Esq., of counsel for defendants:

X Q. 36. You have distinguished the socket described in the Covert patent in suit from the "Wiard socket, Complainant's Exhibit H," by two peculiarities of construction. First, that the Covert thumb screw has only one eye instead of two; and, second, that the Covert screw has a comparatively sharp point; whereas, the end of the "Wiard screw" is only slightly rounded. Do you mean
54 to say that the claim of the Covert patent in suit, particularly points out both of these peculiarities of construction?

A. It does particularly point out the single eye and sharp point.

X Q. 37. In order that your understanding of this claim may be made clear, I now hand you a rope thimble like the "Wiard socket," "Complainant's Exhibit H," except that the end of the screw has been sharpened, or made coniform, and ask you, whether as you read that claim, this thimble (which I will ask the examiner to mark for identification, as the "Wiard sharpened screw"), is within the description of that claim.

(Objected to by complainant's counsel as immaterial, irrelevant and hypothetical.)

A. In my opinion, it is within the scope of the claim, in as far as it relates to the sharp point of the screw; but differs in respect to having two eyes, instead of one.

X Q. 38. Do you regard this difference as one which takes the whole structure out of scope of the patent? I mean by the whole structure, this "Wiard sharpened screw."

(Same objections.)

A. Not necessarily so; I look upon it simply as a colorable difference.

X Q. 39. So that, in your opinion, the distinguishing merit of the invention in suit, if it be an invention, is the advantage which results from having the end of the thumb screw sharpened, instead of flat, is it not?

(Same objections.)

A. I look upon that as being the most essential advantage.

X Q. 40. In the last analysis you would regard that as the test of infringement, would you not?

(Same objections.)

55 A. Not as the sole test, because there are advantages in having a single eye to the screw, instead of a double one.

X Q. 41. But you do not mean to say that the claim of the patent is limited to the use of a single eye in connection with a sharp point, do you?

A. The claim specifies "the eye D," and that as shown in the drawing attached to the patent, is a single eye, but I do not think that the use of a double eye instead of a single one, would evade the charge of infringement.

X Q. 42. That is to say, you think if anybody would take the "Wiard socket, Complainant's Exhibit H," and sharpen the end of the screw, so as to make it substantially like the sharp point "x" of the Covert patent, they would thereby infringe the Covert patent in suit?

(Objected to by complainant's counsel as immaterial, irrelevant and hypothetical.)

A. In my opinion it would be an infringement.

(The socket referred to in cross-question 37, marked for identification in the title of the cause and the words "Wiard sharpened screw," and the initials of the examiner.)

X Q. 43. And I suppose it is equally true that the thimble which I now show you, and which is like those sold by the defendants, except that the point of the screw is rounded like "Complainant's Exhibit H," instead of being comparatively sharp, is not within the claim of the patent, is it?

(Same objections by defendant's counsel.)

A. In my opinion the devise last shown me is not within the scope of the claim.

(The thimble last shown witness is marked by the examiner for identification, with the title of the cause, and the words "defendants' thimble round-pointed screw," and the initials of the examiner.)

56 X Q. 44. In answer to question 12, as to the advantages of a sharp-pointed screw over a flat-pointed screw in rope thimbles, you said, "A sharp-pointed screw will enter the material of which the rope is composed, and hold the thimble in a positive manner, and this is true even if the screw becomes slightly slackened. A flat-ended screw simply holds by frictional contact; and if the screw is slightly slackened, does not prevent the thimble from being slipped out of place. You have stated in that answer the controlling advantage of what you call a sharp-pointed screw over which you call a flat-ended screw, have you not?

A. I have.

X Q. 45. Do you think of any other advantage which a sharp-pointed screw possesses, as contrasted with a flat-ended screw in rope thimbles, and which is not expressed in your answer above quoted.

A. I cannot think of any other advantage at the present time.

WILLIAM H. LOW.

Subscribed and sworn to before me, this 29th day of September, 1886.

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany Co., N. Y., and Special Examiner.

STATE OF NEW YORK, } ss:
City and County of Albany, }

I, Edward W. Rankin, a notary public, in and for said county of Albany and State of New York, duly commissioned and qualified as such, do hereby certify, that on the day named in the foregoing deposition, I was attended at the office of William H. King, Esq., counsel for complainant, No. 31 North Pearl street in said city of Albany, N. Y., by said William H. King, Esq., complainant's counsel, and John K. Beach, Esq., of counsel for defendants, and
57 the witness in said deposition mentioned. That said witness, William H. Low, named therein, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth, and that said deposition was subscribed by said witness in my presence, and said deposition reduced to writing by myself in the presence of said witness and read to him by me, and was taken at the time and place therein mentioned.

That I am not counsel, attorney or relative of either party, or otherwise interested in the event of this suit.

I further certify that the fees for taking such deposition, amounting to the sum of five dollars, have been paid to me by complainant's counsel, and that the amount thereof is reasonable for the services performed.

In testimony whereof, I have hereunto set my hand and my notarial seal of office, this 29th day of September, 1886.

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany Co., N. Y., and Special Examiner.

58 United States Circuit Court, Southern District of New York.

JAMES C. COVERT
ag'st
JOSEPH B. SARGENT and GEORGE H. SARGENT. } In Equity. Second Suit.

Testimony for the complainant, J. C. Covert, in rebuttal, taken before me, Edward W. Rankin, a notary public in and for Albany county, New York, as special examiner, by consent, and pursuant to the sixty-seventh rule in equity, as amended, and to notice therefor given and hereto annexed, to be used on the final hearing in this cause at No. 31 North Pearl street, Albany, N. Y., January 14, 1887.

On said day the case being called by the special examiner, the complainant appeared by William H. King, Esq., of counsel, and the defendants by John K. Beach, Esq., of counsel.

Complainant's counsel offers in evidence "notice to take testimony," on January 14, 1887, before Edward W. Rankin, as special examiner, at the office of said counsel, No. 31 North Pearl street, Albany, N. Y., with proof of service of said notice upon defendants' solicitor.

And the same is marked Complainant's Exhibit "Complainant's Notice."

JAMES C. COVERT, called as a witness for the complainant, and being first duly sworn by the examiner, made answer to interrogatories propounded to him by WILLIAM H. KING, complainant's counsel, as follows:

Q. 1. What is your name, age, residence, and occupation?

A. James C. Covert, age fifty-two years, residence West Troy, N. Y.; occupation, manufacturer.

59 Q. 2. Are you the complainant herein?

A. Yes.

Q. 3. Are you a member of any firm; if so, of what firm, and where located?

A. I am of the firm of the Covert Manufacturing Co., of West Troy, N. Y.

Q. 4. What is the business of the Covert Manufacturing Co.?

A. Manufacturer of saddlery hardware and other goods.

Q. 5. Have your firm ever manufactured and sold "thimbles for hitching devices" under letters patent of the United States, No. 161,757, and dated April 6, 1875, being the patent on which this suit is brought?

A. Yes.

Q. 6. When did your said firm commence to make such thimbles under said letters patent?

A. About the date of said letters patent.

Q. 7. When is the busy season of the year for the sale of cattle ties and thimbles therefor?

A. The latter half of each year.

Q. 8. Can you state how many "thimbles for hitching devices,"

like those patented to you under the patent in suit, your said firm sold during the latter half of the year 1885?

A. Seven thousand nine hundred and sixty dozen.

Q. 9. Can you state how many "thimbles for hitching devices" like those patented to you under the patent in suit, your said firm sold during the latter half of the year 1886?

A. Fifteen thousand two hundred and forty-one dozen.

Q. 10. How do you know your said firm made the sale of the amount of "thimbles for hitching devices" during the latter parts of the years 1885 and 1886, respectively, you have mentioned in your answers to questions seven and eight, respectively?

A. The firm's books show that amount of sales.

60 Q. 11. State, if you know, when the defendants commenced to advertise the sale of "thimbles for hitching devices" like those described in your said letters patent?

A. About the year 1881.

Q. 12. How do you know that defendants commenced to advertise for sale the "thimbles for hitching devices," like those described in your letters patent, in the year 1881?

A. By seeing them advertised for sale in their catalogue of 1881.

Q. 13. Have you catalogues issued in 1881 and 1882 by the defendants of goods sold by them at that time; if so, will you produce the same?

A. I have, and I now produce said catalogue of 1882.

(Complainant's counsel offers in evidence the said defendants' catalogue of 1882, and the same is marked "Complainant's Exhibit Defendants' Catalogue of 1882." E. W. R., N. P. and sp. ex.)

Q. 14. State where, in defendants' catalogues of 1881 and 1882, you find a mention of the "thimble for hitching devices," like those you have heretofore mentioned in this examination?

A. On page 6 B, in catalogue of 1881; on page 5, of catalogue of 1882.

Q. 15. State what you find in regard to said thimble on page 5, of defendants' catalogue of 1882?

A. I find a full-size cut of said "thimble" attached to a snap. The pin in the cut of said "thimble" has a sharp point and centrally located eye. Over the said cut I find the words, "patent cattle ties for rope," and under said cut are the words, "full-sized cut of Nos. 11 and 13, patented May 13, 1879."

Q. 16. Have you any other knowledge of the sale by defendants of "thimbles" than from said catalogue; and if so, state such knowledge?

61 A. I have. I saw them on sale in the hardware stores in different sections of the country in 1882.

Q. 17. Look at the patent to John Wiard, No. 78849, referred to in defendants' testimony, and state what is its date?

A. June 9, 1868.

Q. 18. When did the patent to John Wiard, dated June 9, 1868, and No. 78849, expire?

A. June 9, 1885.

Q. 19. On a motion made for a preliminary injunction herein, did either of the defendants personally make an affidavit in opposition to such motion. If you answer yes, please state which defendant made such affidavit?

A. Yes; Joseph B. Sargent.

Q. 20. Have you read a copy of the affidavit of said Joseph B. Sargent, used on the motion for preliminary injunction herein in opposition thereto?

A. I have.

Q. 21. I now hand you a copy of said affidavit of said Joseph B. Sargent, used on said motion. Does said affidavit of said Joseph B. Sargent, used on said motion, contain any statement as to the time when said defendant began the sale of the "thimble for hitching devices," like "Complainant's Exhibit F," and which you claim infringes the patent in suit? If you answer yes, please read that part of said affidavit which contains such statement.

A. It did, and it does. I read from the said affidavit of said Joseph B. Sargent, as follows: "On or about the expiration of the said patent to John Wiard, the defendants began the sale of substantially the same clamp, or thimble, and which complainant alleges is an infringement of his patent."

Q. 22. Were you present at the examination of Purmort Bradford, a witness for the defendant herein?

A. I was.

62 Q. 23. Did you hear said Bradford's testimony as to the time when the defendants commenced to make thimbles like these described and claimed in your patent in suit?

A. I did.

— 24. What did said Bradford state in such examination as to the time when the defendants commenced to make and sell thimbles like those patented to you in said letters patent in suit?

A. He said the defendants commenced to make the open-back thimble about three years ago, maybe two and a half years ago, and then he said about two years ago, and the closed-back thimble maybe about one and one-half years ago; it might be two years ago.

Q. 25. Have you a patent on the open-back "thimble for hitching devices"?

A. I have.

Q. 26. Give date and number of said last-mentioned patent.

A. January 11, 1881, No. 236,557.

Cross-examination by Mr. BEACH, of counsel for defendants:

X Q. 27. You stated in your affidavit on motion for injunction in this cause, that prior to the defendants beginning to infringe your patent in suit, they were customers of yours. Do you mean that they bought from you such rope thimbles as are illustrated by the cut to which you have referred on page 5 of "Complainant's Exhibit Defendants' Catalogue of 1882"?

A. I could not state what the goods were without examining the books.

JAMES C. COVERT.

Subscribed and sworn to before me, this 14th day of January, 1887.

[L. S.] EDWARD W. RANKIN,
Notary Public in and for Albany Co., N. Y., and Special Examiner.

63 STATE OF NEW YORK, } ss.:
City and County of Albany, }

I, Edward W. Rankin, a notary public in and for said county of Albany and State of New York, duly commissioned and qualified as such, do hereby certify that on the 14th day of January, 1887, I was attended at the office of William H. King, counsel for complainant, at No. 31 North Pearl street, in said city of Albany, N. Y., by the said counsel for complainant, and by John K. Beach, Esq., the counsel for the defendants, and the witness for the complainant in the foregoing deposition mentioned. That the above-named witness, James C. Covert, was by me first duly sworn, to testify the truth, the whole truth, and nothing but the truth, and that the foregoing deposition was subscribed by the said witness, as above set forth in my presence, and said deposition reduced to writing by myself, in the presence of said witness, and read to him by me, and was taken at the time and place therein mentioned, and specified in the foregoing notice, and in the presence of said counsel. That the several exhibits mentioned in said deposition were introduced in evidence and identified by my signature. That I am not counsel, attorney or relative of either party, or otherwise interested in the event of this suit. And I further certify that the fees for taking such deposition amounting to the sum of nine dollars and forty cents, have been paid to me by complainant's counsel, and that the amount thereof is just and reasonable for the services performed.

In testimony whereof, I have hereunto set my hand and my notarial seal of office this 14th day of January, 1887.

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany Co., N. Y., and Special Examiner.

63*b*

UNITED STATES PATENT OFFICE.

JAMES C. COVERT, of Troy, New York.

Improvement in Clasps or Thimbles for Hitching Devices.

Specification forming part of Letters Patent No. 161,757, dated April 6, 1875; application filed February 4, 1875.

To all whom it may concern:

Be it known that I, James C. Covert, of Troy, in the county of Rensselaer and in the State of New York, have invented certain new and useful improvements in thimbles for hitchers; and do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings, and to the letters of reference marked thereon, making a part of this specification.

The nature of my invention consists in the construction and arrangement of a thimble for hitching horses, as will hereinafter be more fully set forth.

In order to enable others skilled in the art to which my invention appertains to make and use the same, I will now proceed to describe its construction and operation, referring to the annexed drawing, in which—

(Here follows diagram marked page 63*a*.)

Figure 1 is a perspective view of my invention, and Fig. 2 is a longitudinal section of the same.

A represents a thimble of any suitable dimensions provided on one side with a nut or enlargement, *a*, having a hole through it with female screw-threads. The thimble A is fastened on the rope B at any desired place by means of a sharp-pointed screw, C *x*, which passes through the thimble at the nut *a* and the rope. This screw is provided with a round eye, D, for the reception of a snap-hook.

This device is intended to snap around the horse's neck, and then pass through the ring of the bit, so that if the horse pulls there will be no strain on the bridle. It is light and neat, and with it there is no danger of the rope working loose, and shoving up around the neck, as is often the case with other devices of this character.

Having thus fully described my invention, what I claim as new, and desire to secure by letters patent, is—

The combination of the tube A, having the projection *a*, with interior screw-threads cast therewith, and the screw C, having the eye D and the sharp point *x*, for entering into the rope, all constructed as and for the purposes set forth.

In testimony that I claim the foregoing I have hereunto set my hand and seal this 16th day of January, 1875.

JAMES C. COVERT. [L. S.]

Witnesses:

MADISON COVERT.

B. MACGREGOR.

J. C. COVERT.

Clasp or Thimble for Hitching Devices.

No. 161,757. Patented April 6, 1875.

Fig 1

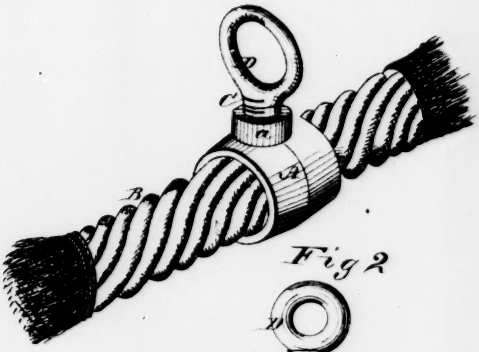
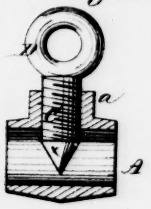


Fig 2



No. 298
Sargent et al.
v
Covert.
} p. 63a

WITNESSES

H. L. Queen

C. L. Ewert

INVENTOR

James C. Covert.

per

Alexander Mason

ATTORNEYS

64 Circuit Court of the United States, Southern District of New York. In Equity.

JAMES C. COVERT
vs.
GEORGE H. SARGENT and JOSEPH B. SARGENT. } Second Suit.

Evidence for Defendants.

Testimony taken under and pursuant to the 67th rule of the Supreme Court of the United States, in equity, as amended, before Francis G. Beach, notary public and special examiner by consent, pursuant to notice and by consent of parties.

65 United States Circuit Court, Southern District of New York.

JAMES C. COVERT
vs.
JOSEPH B. SARGENT and GEORGE H. SARGENT.

Stipulation.

It is agreed that Francis G. Beach, of New Haven, Conn., a notary public, may act as examiner by consent, for the defendants in this cause.

JOHN K. BEACH,
Solicitor for Defendants.
WILLIAM H. KING,
Complainant's Solicitor.

66 NEW BRITAIN, CONN., *November 3d*, 1886—11 o'clock a. m.

Met pursuant to notice.

Present: William H. King, Esq., counsel for complainant, and John K. Beach, Esq., counsel for defendants.

HENRY S. WALTER, a witness produced by and on behalf of the defendants, having been duly cautioned and sworn, testified as follows:

Int. 1. What is your name, age, residence and occupation?

Ans. Henry S. Walter: 38 years old: I reside in New Britain, and am superintendent of Stanley Rule and Level Company.

Int. 2. How long have you been connected with the Stanley Rule and Level Company?

Ans. For about 21 years.

Int. 3. Mr. Covert has testified that the Stanley Rule and Level Company, made and sold cattle ties prior to 1875; is that true in fact?

(Objected to as immaterial and irrelevant, and not a true statement of Mr. Covert's testimony.)

67 Ans. We made them previous to that.

Int. 4. Have you a sample of a cattle tie which is like the cattle ties made and sold by that company prior to 1875, and if so, please produce it?

Ans. Here is the article.

(The cattle tie referred to and produced by the witness is offered in evidence and marked "Defendants' Exhibit Stanley Rule and Level Company Cattle Tie," and with the title of this cause and the initials of the examiner.)

Int. 5. For how long to your knowledge have the Stanley Rule and Level Company made and sold cattle ties like "Defendants' Exhibit Stanley Rule and Level Company Cattle Tie"?

Ans. Since 1868. We commenced to make them in 1868. I don't think we put any on the market before '69.

Int. 6. Are such cattle ties still sold by that company?

Ans. They are.

Int. 7. What, if any, changes have been made during this period from 1868 to the present time in the shape or construction of the parts of the thimble which forms part of the cattle tie, "Defendants' Exhibit Stanley Rule and Level Company Cattle Tie"?

Ans. To the best of my knowledge none.

Int. 8. Were these cattle ties manufactured under any patent?

68 Ans. They were. Wiard's patent cattle tie.

Int. 9. How were they received by the trade?

(Objected to as immaterial and irrelevant.)

Ans. Favorably.

Int. 10. Can you say in a general way to what extent these cattle ties were sold by the company between 1868 and 1879?

Ans. We sold about 8,000 dozens.

Int. 11. Did the Stanley Rule and Level Company advertise these cattle ties in their catalogues?

Ans. They did.

Int. 12. I hand you a catalogue; please state whether you recognize it as a catalogue of the Stanley Rule and Level Company, and if so, of what year?

Ans. I do, of the year 1870.

Int. 13. Do you find in that catalogue any mention of the cattle ties you have been speaking of, and if so upon what page?

Ans. I do. Page 52.

(The catalogue referred to offered in evidence and marked "Defendants' Exhibit Stanley Rule and Level Company Catalogue of 1870," and with the title of this cause and the initials of the examiner.)

69 Int. 14. Whether or not since 1870, the Stanley Rule and Level Company has catalogued these goods, described on page 52 of "Defendants' Exhibit Stanley Rule and Level Company" Catalogue of 1870?

Ans. They have.

Int. 15. Does the Stanley Rule and Level Company issue a catalogue for each year?

Ans. Not always.

Int. 16. Since 1870 has that company issued several catalogues?

Ans. They have.

Int. 17. And in how many of those catalogues, if you know, have these Wiard cattle ties referred to on page 52 of the Defendants' Exhibit "Stanley Rule and Level Company Catalogue of 1870," been advertised?

Ans. In all of them.

Int. 18. Please look at the catalogue I now hand you, and say what it is?

Ans. A catalogue of the Stanley Rule and Level Company, of 1874.

Int. 19. Do you find in that catalogue any reference to cattle ties like "Defendants' Exhibit Stanley Rule and Level Company Cattle Ties," and if so, upon what page?

Ans. I do; page 59.

(The catalogue referred to offered in evidence and marked "Def'ts' Exhibit Stanley Rule and Level Co. Catalogue of 1874," and with the title of the cause and the name of the examiner.)

70 Cross-examination:

X Int. 20. How long have you been a superintendent of the Stanley Rule and Level Company?

Ans. About six years.

X Int. 21. In what capacity were you employed by the Stanley Rule and Level Company prior to six years ago?

Ans. Assistant superintendent for perhaps five years or six years; and before that as invoice clerk and invoice shipping clerk.

X Int. 22. How do you know that the Stanley Rule and Level Company commenced to make the cattle ties like "Defendants' Exhibit Stanley Rule and Level Company Cattle Tie," in 1868?

Ans. From the company's books.

X Int. 23. Between 1879 and the present time, how many cattle ties like "Defendants' Exhibit Stanley Rule and Level Company Cattle Ties," have been sold by said company?

Ans. Not as many on an average as for the ten years reported. I haven't the total amount.

X Int. 24. How many less on an average of the said cattle tie have been sold by said company since 1879?

Ans. I am unable to state. I should say that it has fallen off about 25 per cent., perhaps one-third, at a rough guess.

X Int. 25. Between 1868 and February 4th, 1875, how
71 many of the cattle ties like "Defendants' Exhibit Stanley Rule and Level Company Cattle Ties" were sold by said company?

Ans. An average of about 800 dozen a year, I should think.

X Int. 26. Between February 4th, 1875, to and including the year 1879, how many of the cattle ties like "Defendants' Exhibit Stanley Rule and Level Company Cattle Ties" were sold by said company?

Ans. An average of about 800 dozen a year, I should think.

X Int. 27. From or upon what do you base your statement of the number of the cattle ties like "Defendants' Exhibit Stanley Rule and Level Company Cattle Tie," sold by said company between 1869 and 1879?

Ans. The company's books.

X Int. 28. Have you written statements taken from the books of said company as to the number of cattle ties like said exhibit, sold by said company during and between 1869 and 1879; and if so, will you produce it?

Ans. I have none.

X Int. 29. How did you make up the number 8,000 dozen as being the number of said cattle ties sold by the company?

Ans. By looking at the company's books.

X Int. 30. Is that the only way?

Ans. Yes, it is the only way.

72 X Int. 31. Did these books of the company that you saw contain a yearly statement of said cattle ties sold by the company?

Ans. They did.

X Int. 32. Can you not remember any of the amounts of said cattle ties sold by said company in each year?

Ans. No, I cannot.

X Int. 33. Will you produce a statement showing the yearly sales of the cattle ties like "Defendants' Exhibit Stanley Rule and Level Company Cattle Ties" by said company, from and including 1868 to the present time?

(Objected to as immaterial.)

Ans. I shouldn't care to on my own responsibility. I should want to consult the officers of the company.

(Complainant's counsel gives notice to defendants' counsel that if the statement referred to in the last question is not produced during the examination of this witness, that he, the said complainant's counsel, will move on or before the final hearing in this cause to strike out the testimony of this witness because of such failure to produce the same and permit a cross-examination concerning it.)

(Defendants' counsel further objects to so much of question 33 as relates to a period later than 1879, as not germane to the direct examination.)

73 2.00 O'CLOCK P. M.

Witness states:

After consultation with the secretary of the company, he has and offers to produce copies of entries in the books of the Stanley Rule and Level Company, showing the annual sales of cattle ties like "Defendants' Exhibit Stanley Rule and Level Company Cattle Tie," from 1869 to January 1st, 1886.

X Int. 34. Please produce the statement showing the sales of cattle ties like "Defendants' Exhibit Stanley Rule and Level Company Cattle Tie," by said company, from 1869 to January 1st, 1886.

Ans. (The witness produces statement.)

X Int. 35. Please read from said statement the numbers of sales during said period.

Ans. 1869, 865 dozen.
1870, 787 "
1871, 863 "
1872, 995 "
1873, 655 "
1874, 842 "
1875, 1,114 "
1876, 664 "
1877, 641 "
1878, 562 "
1879, 882 "
74 1880, 652 "
1881, 612 "
1882, 400 "
1883, 138 "
1884, 147 "
1885, 65 "

X Int. 36. Please state whether or not the number of sales mentioned in the statement just read by you included all sockets like those fastened on the "Defendants' Exhibit Stanley Rule and Level Company's Cattle Tie," no matter whether the said sockets were sold fastened on the rope or in boxes or packages separate from the rope?

Ans. They do include all.

X Int. 37. Does the Stanley Rule and Level Company have traveling agents selling the goods of said company?

Ans. They do.

X Int. 38. And have they had such traveling agents since 1868?

Ans. They have.

X Int. 39. Have they had more or less number of traveling agents since 1875 than between 1868 and 1875.

Ans. I think we had less, because between 1868 and 1875 we had special agents who introduced new carpenters' tools, and who did little else except introducing such tools. In other respects we had about the same force of traveling agents during those periods.

X Int. 40. Has the Stanley Rule and Level Company advertised the sockets like those on "Defendants' Exhibit Stanley Rule
75 and Level Company Cattle Ties" continuously since 1875?

Ans. They have.

Redirect examination:

R. D. Int. 41. Do you know whether these traveling agents of the Stanley Rule and Level Company referred to in your answer to X Ints. 37, 38, and 39 were supplied with samples of the Stanley Rule and Level Company cattle tie.

Ans. During some of their trips they carried samples, at other times not. When the goods were new, in introducing them they carried samples.

R. D. Int. 42. Have they carried any samples of these cattle ties since 1875?

Ans. I think it very possible, as recently as 1877 or 1878, it is possible on some trip, but I could not state positively.

R. D. Int. 43. Can you give any reason why they should not have carried them later than 1877 and 1878?

Ans. There are several reasons. The goods were well known, and since about that time we have devoted our attention mainly to the manufacture and sale of carpenters' tools.

Recross:

76 Re-X Int. 44. Can you give any other reasons than those stated in answer to R. D. Int. 43 why the said traveling agents have not carried said samples.

Ans. No; I think there was no other reason.

Re-X Int. 45. Did or did not the traveling agents of said company during the years from 1869 down to the present time, carry catalogues or books showing and giving a description of the goods manufactured and sold by said Stanley Rule and Level Company, and which books contained the drawing and description of the socket like the one on "Defendants' Exhibit Stanley Rule and Level Company Cattle Tie," and like said exhibit?

Ans. They did, every trip.

Re-X Int. 46. The carrying of such book, then, was an additional reason why the traveling agents did not carry samples, was it not?

Ans. Yes.

Re-X Int. 47. The trade also had catalogues of said company?

Ans. Yes, they had.

(Signed) HENRY S. WALTER.

Subscribed and sworn to this 3d day of November, 1886, before me—

FRANCIS G. BEACH,
Special Examiner.

77 JOHN WIARD, a witness produced by and on behalf of the defendants, being duly cautioned and sworn, testified as follows:

Int. 1. What is your name, age, residence and occupation?

Ans. John Wiard; 69 years old; I reside in New Britain; I am an assistant in pastoral work.

Int. 2. Are you the John Wiard named in letters patent of the United States, No. 78849, dated June 9, 1868?

Ans. I am.

Int. 3. State whether you licensed anybody to manufacture the devices described in said patent, and if so, whom?

Ans. I licensed the Stanley Rule and Level Company.

(Defendants' counsel offers in evidence a certified copy of the Wiard patent, No. 78849, dated June 9, 1868, and the same is marked

"Defendants' Exhibit Wiard Patent:" and with the title of this cause, and the initials of the examiner.)

Int. 4. Were you paid a royalty by the Stanley Rule and Level Company for the privilege of manufacturing cattle ties under the Wiard patent?

Ans. I was.

Int. 5. Was, or was not, that royalty paid to you during the life of that patent?

78 Ans. It was.

Int. 6. What was your occupation in 1868?

Ans. I was in the employ of the Stanley Rule and Level Company.

Int. 7. Were you personally familiar with the cattle ties made by the Stanley Rule and Level Company in 1868 and 1869?

Ans. I was.

Int. 8. Please look at the thimble which forms part of the "Defendants' Exhibit Stanley Rule and Level Company Cattle Tie," and compare it with your recollection of the thimbles made by the Stanley Rule and Level Company, in 1868 and 1869, particularly with reference to the end of the thumb screw?

Ans. It is precisely the same according to my recollections.

Int. 9. Please look at "Defendants' Exhibit Stanley Rule and Level Company Cattle Tie," and say whether the end of the thumb screw appears to indent the rope or be squeezed into it, when the thumb screw is turned hard down?

Ans. When turned hard down it does make an indentation of course.

Int. 10. Do you know from your own observation whether or not cattle ties like "Defendants' Exhibit Stanley Rule and Level Company Cattle Tie," were successfully used by customers between 1869 and 1875?

Ans. They were—I know they were.

79 Cross-examination:

X Int. 11. What royalty did the Stanley Rule and Level Company pay you for the manufacture of the device mentioned in your patent?

Ans. The first year they paid me twelve cents per dozen with the rope and six cents per dozen without the rope, after the first year they paid just half that so long as the patent ran.

X Int. 12. How many of the customers of the Stanley Rule and Level Company who had bought and used cattle ties of said company, did you see and converse with in regard to said cattle ties between 1868 and 1875?

Ans. It would be impossible to tell; I could only guess. I saw several farmers in the vicinity of New Britain who bought them and used them.

X Int. 13. How long have you lived in New Britain?

Ans. Twenty-two years. I came here in 1864.

X Int. 14. How long have you been occupied as an assistant in pastoral duties?

Ans. It is nearly six years. I left the Stanley Rule and Level Company's employ in February, 1881.

(Signed) JOHN WIARD.

Subscribed and sworn to, this 3d day of November, 1886, before me—

FRANCIS G. BEACH,
Special Examiner.

(Adjourned to November 4th, 1886, at 10 o'clock a. m.)

80 NEW HAVEN, CONN., *November 4th*, 1886—10 o'clock a. m.

Parties present as before.

Met pursuant to adjournment.

PURMORT BRADFORD, a witness produced by and on behalf of the defendants, having been duly cautioned and sworn, testified as follows:

Int. 1. What is your name, age, residence and occupation?

Ans. Purmort Bradford; I am sixty-seven years old; I reside in New Haven, Conn.; am superintendent at Sargent and Company's, of New Haven, manufacturers of hardware.

Int. 2. How long have said Sargent & Company, to your knowledge, been manufacturing cattle ties with a metallic thimble adjustable on the rope, and a snap-hook to engage with an eye on the said thimble?

(Objected to as immaterial and irrelevant.)

Ans. Sargent & Company made them when they first moved to New Haven. It was made by J. B. Sargent in New Britain previous to 1864.

Int. 4. What sort of a thimble was used on these cattle ties that were made about 1864?

Ans. That is the kind.

81 (Witness refers to Complainant's Exhibit I, Sargent-Hull socket.)

Int. 5. How long did Sargent & Company continue to manufacture cattle ties on which sockets were used like the Sargent-Hull socket you have just referred to?

Ans. They make them at the present time, and have continued to make them all the while.

Int. 6. Have Sargent & Company, so far as you know, ever manufactured cattle ties like the one now shown you and marked "Complainant's Exhibit E," with especial reference to the thimble on that cattle tie?

Ans. They have.

Int. 7. Are Sargent and Company now manufacturing cattle ties

having thimbles with the same kind of a thumb screw as that belonging to the thimble on Complainant's Exhibit E?

Ans. They are not.

Int. 8. Have you any sample of the form of thumb screw which Sargent & Co. are now using on their cattle ties.

Ans. I have.

(The witness produces a thumb screw and the same is offered in evidence, and marked for identification with the words "Bradford round-pointed screw.")

(Objected to as immaterial and irrelevant and same objection to Int. 8.)

82 Int. 9. Please state what the difference is between the thumb screw which you have just produced, and which is marked "Bradford round-pointed screw," and the thumb screw which belongs to the thimble on "Complainant's Exhibit E."

(Objected to as immaterial and irrelevant and as the two devices show of themselves.)

Ans. This "Bradford round-pointed screw" has a round or oval end which presses the rope instead of dividing it; whereas the screw on "Complainant's Exhibit E" has a sharp point.

(Objected to as not responsive.)

Int. 10. Do you know why Sargent & Co. made that alteration in the shape of the point of the thumb screw?

(Objected to as immaterial and irrelevant.)

Ans. Yes, sir. We found the sharp points in dividing the strands would allow it to slip after working the rope some.

Int. 11. Can you illustrate that by means of any exhibit?

(Same objection.)

Ans. If this, (the one with the sharp point) strikes between the strands it slips.

83 (The witness produces a piece of rope with a rope thimble thereon, and the same is offered in evidence, and the same is marked "Defendants' Exhibit Bradford Rope and Thimble.")

Int. 12. Can you say what is the reason for the bulge, or belly, in the body of the thimble on "Complainant's Exhibit E."

(Objected to as immaterial and irrelevant.)

Ans. It is to bend the rope, to keep it from slipping, with the pressure of the screw.

Int. 13. Have you a sample of the castings from which the thimbles manufactured by Sargent & Co. are finished?

(Objected to as immaterial and irrelevant.)

Ans. I have.

(The witness produces a casting, and the same is offered in evidence, and marked "Defendants' Exhibit Bradford Casting."

Int. 14. Please look at the thimble on "Complainant's Exhibit E," and say whether you can tell of whose manufacture it is?

84 Ans. I should say it was Sargent & Co.'s; at least, it is like it.

Int. 15. Can you say how the interior screw-thread in that thimble was formed?

(Objected to as immaterial and irrelevant.)

Ans. It was made with a tap.

Cross-examination:

X Int. 16. You say that Sargent & Co. have continuously, since about 1864 to the present time, made the Sargent-Hull socket like Complainant's Exhibit I. Was such socket made by said Sargent & Co. under any patent, if so, under whose patent?

Ans. It was under Hull's patent.

X Int. 17. Has that patent expired?

Ans. I think it has.

X Int. 18. When did it expire?

Ans. I couldn't tell you now. I think it was extended once after its expiration, or about that time.

X Int. 19. Do you know the grounds of such extension of said patent?

(Objected to as immaterial.)

Ans. I do not.

X Int. 20. About how many sockets like Sargent-Hull

85 socket, Complainant's Exhibit I, have Sargent & Co. made since Jan. 1st, 1886?

(Objected to as immaterial and not germane to the direct examination.)

Ans. I couldn't give you the amount.

X Int. 21. Can you not approximate the amount?

(Same objection.)

Ans. I could not. I haven't any idea how many they have made.

X Int. 22. Do you know whether or not they have made any such Sargent-Hull sockets since Jan. 1st, 1886?

(Same objection.)

Ans. I know there were some castings ordered.

X Int. 23. Do you know how many said castings were ordered since Jan. 1st, 1886?

(Same objection.)

Ans. I do not.

X Int. 24. These Sargent-Hull sockets were practical, and well

adapted to the purpose for which they were to be applied, were they not?

(Objected to as not germane to direct examination and defendants' counsel gives notice to complainant's counsel that if the question is insisted upon, he makes this witness his witness.)

86 Ans. I do not know of any reason why they are not.

X Int. 25. Has the manufacture by Sargent & Co. of the Sargent-Hull socket, like Complainant's Exhibit I, increased each year for the past ten years?

(Same objection.)

Ans. I could not tell.

X Int. 26. You have been superintendent of Sargent & Co. during the past ten years, have you not?

Ans. I have.

X Int. 27. And, as such superintendent, have knowledge of what, and how much, they manufacture. Is not that a fact?

Ans. No, sir; I have knowledge of what is made there, but not the quantities. That does not come under my supervision.

X Int. 28. Do you not keep informed, as such superintendent, of the general amount of goods manufactured by Sargent & Co.?

Ans. I do not.

X Int. 29. When did Sargent & Co. commence to manufacture the thimble like the thimble on Complainant's Exhibit E?

(Objected to as immaterial.)

Ans. I could not give you the date.

X Int. 30. Can you not give the year when Sargent & Co. commenced to manufacture the thimble like the thimble on Complainant's Exhibit E?

87 (Same objection.)

Ans. I have nothing definite to place the year. It might be a year and a half, or it might be two years, or it might be more than that.

X Int. 31. When did Sargent & Co. commence to make thimbles with the end of the screw made oval, like the Defendants' Exhibit "Bradford Round-pointed Screw"?

Ans. I should say it was within a year, it might be a little over, or it might be a little less than that.

X Int. 32. Who first suggested the change in the end of the screw from a sharp point to the oval end, like the Defendants' Exhibit Bradford Round-pointed Screw?

(Objected to as immaterial.)

Ans. I could not tell who did first suggest it.

X Int. 33. Was, or was not, such change your suggestion?

Ans. It might have been my suggestion, as I talked the thing up with the Sargents and the men that made them several times.

X Int. 34. When did you first talk with the Sargents about making such change in the end of the screw?

Ans. I should think it might be a year ago or thereabouts, it might be a little more or a little less.

X Int. 35. Give the names of the men who made the screws for the thimbles for Sargent & Co.

(Objected to as immaterial and irrelevant, and as an unwarranted enquiry into the business of Sargent & Co., who are not the defendants in this cause. And the witness is instructed by defendants' counsel that he need not answer the question unless he desires to.)

88

(Witness refuses to answer.)

(Complainant's counsel hereby gives notice to defendants' counsel, that, by reason of the refusal of this witness to answer this question, which is a proper legal one on cross-examination, he will, at or before the final hearing, move to strike from the record the deposition of this witness. Without waiving any right under this notice, complainant's counsel continues to cross-examine the witness.)

X Int. 36. Please state whether or not the change in the end of the screw of the thimble made by Sargent & Co. from the sharp point to the oval end was made since the commencement of this suit.

(Objected to as immaterial, Sargent & Co. not being defendants in this suit.)

Ans. I don't know when this suit commenced.

89

X Int. 37. When did you first learn of the existence of this suit?

Ans. Today at half past nine, it might have been quarter past nine.

X Int. 38. Do you mean to say that today you received the first intimation of the commencement of this suit?

Ans. I do.

X Int. 39. By whom were you informed today of the existence of this suit?

Ans. I was informed by Joseph B. Sargent.

X Int. 40. Is the Joseph B. Sargent who informed you today of the existence of this suit one of the defendants in this case?

Ans. He did not say that he was. He said that there had been a suit brought by Mr. Covert. He did not say whom it was against, but I inferred that it was against Sargent & Company.

X Int. 41. Do you positively state that today is the first time that you have heard of this suit being brought?

Ans. I do.

X Int. 42. Do you positively state that you have not been informed of the existence of this suit by either of the defendants' counsel or either of such counsel, or by any other person, or in any manner direct or indirect before this day?

Ans. I do.

90 "X Int. 43. Do you know whether or not a motion for a preliminary injunction was made in this suit?

Ans. I knew there was something about the cattle tie, but what it was I did not know, I had supposed it was the strap on the end.

X Int. 44. What do you mean by the strap on the end?

Ans. On the end of the rope, the metallic band.

X Int. 45. Did not either Joseph B. Sargent or George H. Sargent, or their solicitors and counsel, John S. Beach, Esq., or John K. Beach, Esq., or the present examiner, Francis G. Beach, at any time inform you, that a motion for a preliminary injunction was made or about to be made in this suit by Mr. Covert, the complainant, or his solicitor for him?

Ans. They did not. Neither of them.

X Int. 46. And you at the present time are not aware that the complainant ever made or attempted to make a motion for a preliminary injunction in this suit?

Ans. I am not to this day.

X Int. 47. Did you or did you not make any affidavit to oppose a motion for a preliminary injunction made by complainant in this suit?

Ans. I don't know that I ever did in this suit. I remember making an affidavit here, but I had supposed the suit was on the strap on the end.

X Int. 48. Did you, or did you not, in the month of May, 1886, make oath to the following affidavit in this cause:

91 "Circuit Court of the United States, Southern District of New York.

JAMES C. COVERT
vs. } In Equity.
GEORGE H. SARGENT and JOSEPH B. SARGENT.

Affidavit of Parmort Bradford on Motion for Preliminary Injunction.

Parmort Bradford, being duly sworn, deposes as follows:

I am sixty-seven years of age, and for the last past twenty-two years have resided in New Haven, Connecticut. I know the defendants in this cause and am superintendent over the manufacture of the cattle ties, thimbles or clamps sold by defendants, and alleged by the plaintiffs in this cause to be an infringement upon a patent right owned by him. I have been such superintendent ever since the beginning of the manufacture of said thimbles sold by defendants, and am entirely familiar with each and every step and process in their manufacture. The socket, or thimble, or body, of the article is cast in the foundry in the form and condition as shown in exhibit hereto attached, marked 'P. B. Thimble.' The side orifice, or opening for the entrance of the thumb screw, has always been cast without any screw-threads. Screw-threads were afterwards cut in by special tools."

Ans. I did.

92 X Int. 49. How is it, then, if you made that affidavit you can now state that today is the first time you first learned of this suit?

Ans. I supposed that had reference to the general construction of the cattle tie with the straps and all complete. I did not know that there was a separate suit on the thimble, and had supposed that that case had been brought to trial and decided till today.

X Int. 50. Did you not read or hear the affidavit referred to in X Int. 47 read before you made oath to it?

Ans. I think I read it. I might not have read it as carefully as I ought to, but I think I read it all. I am sure I did.

X Int. 51. Were you not a witness in another suit between the same parties, complainant and defendants, as are in this suit brought for an infringement of a patent for rope clamps?

Ans. I do not remember that I ever was. I might have been. There were so many cases that I attended that I could not remember them all.

X Int. 52. Do you remember whether or not you made any affidavit in opposition to a motion for a preliminary injunction made by James C. Covert, complainant herein, in an action against these same defendants, as are in this suit, brought for infringement of a patent for rope clamps?

Ans. I don't know whether I ever have. I don't remember it now. If you mean by a rope clamp a metallic clamp on the end of a rope, I do remember it. I remember making an affidavit on the construction of this tie.

93 (The witness refers to Complainant's Exhibit E.)

X Int. 53. Can you now state whether the change of the end of the screw of the thimble, like the thimble on Complainant's Exhibit E, from a sharp point to an oval end, was made before, or since, about March 13th, 1886, the date of the commencement of this suit?

Ans. I could not. But in my opinion, it was made longer ago than that.

X Int. 54. In answering to X Int. 51 you said "There are so many cases that I attended that I cannot remember them all." Please state whether or not in all these cases you attended as a witness, and also whether or not the same were against Joseph B. Sargent and George H. Sargent, Sargent & Co., also, in how many cases against those named above, you have been a witness for said Sargents, and Sargent & Co.?

(Objected to as immaterial and irrelevant.)

Ans. There are other parties that I have been a witness for. In all these cases I attended as a witness. There are other parties that I have been a witness for besides said Sargents, and Sargent & Co. Well, I couldn't tell off-hand in how many cases I have been a witness for the said Sargents, and Sargent & Co. I should think there might be four or five for them, and as many more for somebody else.

94 X Int. 55. Were the Sargents, or Sargent & Co., interested in the other suits in which you were a witness?

(Objected to as immaterial and irrelevant, and not probably within the knowl- of the witness.)

Ans. I say that they were not in all the suits, and in these other suits they were not interested at all.

(Adjourned to 2 o'clock p. m.)

2 O'CLOCK P. M.

Cross-examination resumed:

X Int. 56. When did Sargent & Co. discontinue making thimbles with a sharp-pointed screw, like the one on Complainant's Exhibit E?

Ans. I should think it was in the neighborhood of a year. It might be less or more. I couldn't give you the precise time.

X Int. 57. Why did they discontinue making thimbles having sharp-pointed screw therein, like the one on Complainant's Exhibit E?

Ans. Because they considered the blunt point best.

X Int. 58. How long did it take them to arrive at the conclusion that a blunt-pointed screw in the thimble was the best?

Ans. I couldn't tell you now, how long they were making the others. I mean the sharp-pointed screws.

95 X Int. 59. Please explain more fully what you mean by the blunt-pointed screw being best.

Ans. The blunt-pointed screw presses the rope down in the bend.

X Int. 60. You mean that the blunt point presses on the strands of the rope, and does not enter between the rope strands.

Ans. I do.

X Int. 61. Whereas, the sharp-pointed screw enters between the strands of the rope?

Ans. They do.

X Int. 62. You have produced an exhibit which has been marked Defendants' Exhibit "Bradford Rope and Thimble." In answer to Int. 11 you said, when having this exhibit in your hand, "If this, the one with the sharp point," meaning the screw in the thimble on the rope, "strikes between the strands, it slips." Where was said thimble placed on the rope of said exhibit at the time you said the thimble would slip?

Ans. About where it is now. About two inches from the center of the thimble to the end of the rope which has the metallic band upon it.

X Int. 63. The strands at the end of the rope, about which is the metallic band, are somewhat disconnected, are they not?

Ans. They are disconnected by the screw.

96 X Int. 64. The strands at the end of the rope of that exhibit are not so closely twisted, as such strands are twisted nearer the center of the rope are they?

Ans. They are not now. They were when I put that on.

X Int. 65. The rope of said exhibit is about how long?

Ans. Fourteen inches.

X Int. 66. A rope of that length is more liable to become untwisted along its entire length, especially so as upon one of its ends there is nothing to prevent the untwisting, than would occur either in a rope of greater length or if another band was placed on the other end of the rope would it not?

Ans. I don't think it would make any difference.

X Int. 67. I have now in your presence moved the thimble upon your exhibit Defendants' Exhibit Bradford Rope and Thimble, so that the center of said thimble is six inches from the metallic band around one end of the rope of said exhibit. Please take said exhibit in your hand and endeavor with all your strength to move or slide said thimble along said rope, and state what is the result of your experiment, so far as the slipping of the thimble is concerned.

Ans. The way I test them is to put them in a vise, wind the rope around a lever and bear down on the lever, and if they slip I don't consider them good.

(Answer objected to as not responsive.)

X Int. 68. Question 67 repeated.

97 Ans. I decline to pull on it with my hands.

X Int. 69. When under direct examination in answer to Int. 11 you were testifying in regard to the slipping of the sharp-pointed screw thimble on the exhibit referred to in the last question, and while the thimble was placed at about two inches from the end of the rope which had the metallic band thereon, you experimented with said exhibit in the pretended slipping of said thimble by using your hands did you not?

Ans. I did.

X Int. 70. If you can experiment with your hands with said exhibit in the one position where the strands of the rope are more loosely connected there the better to carry out your theory of the slipping of the thimble on the rope, why do you decline to experiment with your hands with the same exhibit when the thimble has been moved a greater distance from the end and the strands more closely connected and the conditions less favorable for your theory of slipping?

Ans. When I prepared this Exhibit Bradford Rope and Thimble, I put a thimble with a sharp-pointed screw about two inches from the end of the rope, on the other end I put one with a blunt screw about the same distance. Screwed them down as near as I could to the same weight, then I put them into a vise with a lever on them, and the one with the point slipped, while the one with the blunt point would not slip. The blunt-point one was taken off after I fetched it here. The blunt-point one is now in evidence,

98 and marked Defendants' Exhibit Bradford Round-pointed Screw.

(Answer objected to as not responsive.)

X Int. 71. Question 70 repeated.

Ans. When I put that on I did not intend to experiment in exhibiting it. I intended to show what I had experimented.

(Objected to as not responsive.)

X Int. 72. Question 70 repeated.

Ans. Because my hands are not used to pulling, and are not strong enough.

X Int. 73. Your hands were strong enough to make the experiment with the said rope exhibit when the strands were loose enough and the condition favorable were they not? In other words when the thimble was about two inches from the end of the rope?

Ans. They were not. I only endeavored to show what I had done.

X Int. 74. The thimble had been securely placed on the rope Defendants' Exhibit Bradford Rope and Thimble about two inches from the end of said rope when you experimented therewith before the examiner today had it not?

Ans. No, sir, it had not. Not here when I experimented with it before the examiner.

99 X Int. 75. Do you now mean to say that the reason why you said in answer to question 11, that the thimble slipped when you were experimenting before the examiner, today, was because the thimble had not been securely fastened on the rope of said exhibit?

(Question objected to because the witness did not say that the thimble slipped when he was experimenting with it before the examiner. And the defendants' counsel further objects to this line of cross-examination as frivolous and unnecessary.)

Ans. I did not say so. What I said was that I found the rope more liable to slip with a pointed screw than with a blunt screw.

(Objected to as not responsive.)

X Int. 76. Question 75 repeated.

Ans. I can't answer it because I did not say those words.

X Int. 77. In your experiments this morning before the examiner when by your hands you caused the thimble which had been placed on Defendants' Exhibit Bradford Rope and Thimble about two inches from the end of the rope to slip, was said thimble securely and properly fastened on said rope, so that the screw had entered to its greatest distance between the strands of said rope.

(Question objected to as assuming something not in proof.)

100 Ans. I did not make any experiment before the examiner. I only showed the experiment that I had made this morning.

X Int. 78. Did or did you not with your hands before this examiner this morning, while the thimble upon the Exhibit Bradford Rope and Thimble was placed about two inches from the end of the rope thereof, cause the thimble to slip upon said rope?

(Objected to as immaterial.)

Ans. I might have slipped it to show you how I had prepared it.

X Int. 79. I now have placed the thimble on the Exhibit Bradford Rope and Thimble at one and five-eights inches from the end of said rope, having the metallic band thereon, please take said exhibit and with your hands endeavor to move said thimble, and after such experiment please state the result thereof.

(Objected to as immaterial and irrelevant.)

Ans. I should refuse to pull on it with my hands as I am accustomed to try them in a vise.

X Int. 80. Is the thimble upon the Defendants' Exhibit Bradford Rope and Thimble the same in construction as the thimble now on Complainant's Exhibit E?

Ans. It is not.

X Int. 81. State wherein the two thimbles differ.

101 Ans. The one of the Bradford exhibit has a hole on the back, while the one on Complainant's Exhibit E, has a solid back with a crooked bottom.

X Int. 82. When did Sargent & Company commence to make thimbles like the thimbles on Defendants' Exhibit Bradford Rope and Thimble?

Ans. I should think it might be three years ago. It might be only two years and a half. I couldn't tell exactly. It was two or three years ago.

X Int. 83. Do you know whether or not James C. Covert the complainant herein has a patent on the thimble with an open back, like the one on "Defendants' Exhibit Bradford Rope and Thimble"?

Ans. I never saw his patent papers, but I have understood that Mr. Covert claimed that thimble with a hole in it and the metallic band on the rope.

X Int. 84. From whom did you understand that Mr. Covert made that claim?

Ans. From Mr. Joseph B. Sargent, I think. It may be Henry Sargent. I could not say for certain.

X Int. 85. Have the defendants made any change in the form of the thimble so far as the bottom or back thereof is concerned only, like the thimble on Complainant's Exhibit E, since they first commenced to make said thimbles?

Ans. No change has been made. We first commenced to make the thimbles with an open back like the one on Defendants' Exhibit Bradford Rope and Thimble, and they afterwards

102 changed to the one with the bulged closed back like the one on Complainant's Exhibit E. When we first changed from the open back to the closed back, it may be that we simply stopped the hole and made them in other ways the same, but it was only for a week or so anyway.

Redirect examination:

R. D. Int. 86. In answer to X Q. 77 you said: "I did not make

any experiment before the examiner. I only showed the experiment that I had made this morning." Was the experiment which you referred to in that answer made before you began to testify this morning.

Ans. It was.

R. D. Int. 87. At the factory at Sargent & Company?

Ans. At the factory of Sargent & Company.

R. D. Int. 88. Is that the same experiment to which you had previously referred in answering question 70?

Ans. That is the same experiment.

(Signed) PURMORT BRADFORD.

Subscribed and sworn to this 4th day of November, 1886, before me—

FRANCIS G. BEACH,
Special Examiner.

Adjourned till further notice.

103 NEW HAVEN, CONN., *December 28th*, 1886, 10.00 o'clock a. m.

Met pursuant to notice.

Present: Wm. H. King, Esq., counsel for complainants; John K. Beach, Esq., counsel for defendants.

JOHN E. EARLE, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows:

Int. 1. What is your name, age, residence and occupation?

Ans. John E. Earle; I am 55 years of age; I reside in New Haven, Conn., and am a solicitor of patents.

Int. 2. What, if any, experience have you had as a mechanical expert, in patent causes?

Ans. For more than 35 years I have been engaged in soliciting patents. Since 1862, my business has been almost exclusively in connection with patents. Prior to that time, in connection with mechanical drawing. Since January, 1862, I have personally prepared more than 7,000 applications for letters patent. During this time I have made many examinations into the state of the art relating to mechanical structures to ascertain the validity and
104 scope of letters patent, and during the past fifteen years have testified as a mechanical expert in a large number of causes in the United States courts. I have also several times acted as arbitrator to determine the scope and validity of letters patent and the value of the inventions secured by such letters patent.

Int. 3. Have you read and do you understand the patent in suit, being No. 161,757, to J. C. Covert, for improvement in clasps or thimbles for hitching devices?

Ans. I have and I do.

(Defendants' counsel offers in evidence a certified copy of the patent in suit, and the same is marked, "Def'ts' Exhibit Complainant's File-wrapper and Contents." F. G. B., sp. ex.)

Int. 4. What do you find to be the improvement in rope thimbles, which is described and claimed in the patent in suit?

Ans. The thimble as a whole is a device of a tube-like character adapted to be passed onto a rope, and having a set-screw introduced radially through one side of the tube to bind upon the rope and clamp it within the tube. The screw constructed with a head having an opening through it, with which a hook on one end of the rope may be engaged, so as to form a loop around the head of the animal. The tube or sleeve, by means of the screw, is made
105 adjustable on the rope, so that by moving it toward or from the hook end of the rope, it will correspondingly diminish or increase the size of the loop to adapt it to varying sizes of neck. Such an adjustable thimble or sleeve, broadly considered, I understand to have been well known at the date of the invention of the patent in suit. The patent describes the screw as having a sharp point. The claim recites as combination of elements: first, the tube; and, second, the screw having an eye, and adapted to bear upon the rope. So far, these elements were, as I understand it, well known at the time of the patent in suit. The qualifications of these elements made in the claim to distinguish it from the then known art, are: first, that the screw-threads are cast in the tube; and second, that the screw has a sharp point. I understand the invention recited in the claim of the patent, therefore, to be the then old and well-known rope clasp or thimble for hitching devices having the screw-threads cast in the tube, in contradistinction to being mechanically cut, and *and* that the inner end of the screw is sharp in contradistinction to being blunt.

Int. 5. According to the specification of the patent, what is the object of casting the screw-threads, if any object at all is pointed out?

Ans. There is no reference in the specification as to casting the screw-threads in the tube; this description is found only as a qualification in the claim. The object of so casting the screw-thread is not indicated in the patent.

106 Int. 6. I find in Defendants' Exhibit Complainant's File-wrapper and Contents, that the following claim was made by the applicant, and rejected by the office: "The combination of the thimble A, rope B, and sharp-pointed screw C, provided with the eye D, substantially as, and for the purposes herein set forth." And I learn, from the file-wrapper and contents aforesaid, that thereupon the said claim was cancelled by applicant's attorneys and the claim of the patent as it now reads, was inserted. Please compare the claim as quoted above, with the claim of the patent in suit, and point out what, if any, differences you find.

(Objected to as immaterial and irrelevant.)

Ans. I will ask the examiner to write the two claims in parallel columns. In the first column the original, rejected, and cancelled claim. In second column the inserted and present claim.

"The combination of the thimble A, rope B, and sharp-pointed screw C, provided with the eye D, substantially as, and for the purposes herein set forth."

"The combination of the tube A, having the projection *a*, with interior screw-threads cast therewith, and the screw C, having the eye D, and the sharp point X for entering into the rope, all constructed as, and for the purposes set forth."

I understand the original claim to be for the rope clasp
107 which I have described as known in the art at the date of application in question, and, because so well known in the art, not patentable.

By the qualification introduced in the claim, to wit, casting the screw-threads in the thimble, the difference between the art and the original claim was indicated, and that such specification, in the opinion of the patent officials, constituted invention over the prior state of the art. I take into consideration the fact, that in the inserted claim, the tube is further qualified by having the projection *a*, but, inasmuch as prior to this application, such tubes necessarily had the same projection, I do not understand this to be an essential qualification, the projection being simply a thickening of the tube to give the screw a considerable hold.

Int. 7. Please compare the rope clasp, or thimble, on the Exhibit Stanley Rule and Level Co. Cattle Tie, with the thimble described in the patent in suit, and state what, if any, differences you find between them.

Ans. The tube is the same as the tube shown and described and referred to in the claim of the patent, except that the screw-thread, through the projection or thickened part of the tube, is mechanically cut, instead of cast therein, as required by the claim. The screw in this exhibit differs from the screw in the patent in two points only. First, in the exhibit, the screw is constructed with two eyes, instead of one, as in the patent. Second, the inner, or bearing
end of the screw, is made of convex shape, instead of cone
108 shaped, as in the patent. Otherwise than in these differences, the two devices are the same, are used in the same way, and for the same purpose.

Int. 8. Does the patent in suit ascribe any particular advantage to be derived from sharpening the end of the screw?

Ans. No, sir.

Int. 9. Does it state what the object, or effect, of sharpening the screw is?

Ans. No, sir.

Int. 10. Assuming that at the date of the patent in suit, cattle ties like Defendants' Exhibit Stanley Rule & Level Co. Cattle Tie were well known in the art, state whether, in your opinion, and on the state of the art, it required any exercise of inventive genius either to sharpen the end of the screw, or to predict what would happen if the screw were sharpened.

(Objected to as immaterial and irrelevant, and assuming, and indefinite.)

Ans. Many years prior to the patent in suit, conical-pointed screws were in common use for many purposes, the object of the conical point being that the point of the screw might be forced into the material on which it bore, and so as to take a firm hold of that material. The imbedding of the screw into the material increasing the hold over what it would be if it was simply surface-bearing.

The point of such screws was made more or less perfect, ac-
109 cordingly as a more or less ready impression of the screw upon the material was desirable. Because such sharp-pointed screws were well known prior to the patent in suit, and pointed for an analogous purpose, I cannot understand that it required invention to increase the point-like character of the Exhibit Stanley Rule & Level Co. Cattle Tie, that is, to convert the equally well known convex end of a screw to a conical shape.

Int. 11. As a matter of fact is the thimble on the Exhibit Stanley Rule and Level Company Cattle Tie held in position by frictional or surface contact of the end of the screw with the rope?

Ans. No, sir; simply surface contact of the end of the screw with the rope could not hold the rope. The screw turned to a moderately hard bearing on the rope is made by four full turns of the screw after surface contact is made between the end of the screw and the rope as I have just applied it to the rope. In this condition the distance between the end of the screw and the opposite side of the tube is $\frac{5}{16}$ of an inch. The diameter of the rope is $\frac{9}{16}$ of an inch. Hence the screw must have penetrated the rope at least $\frac{4}{16}$ of an inch as I have applied it. I do not wish to be understood that such an extent of penetration is necessary to make a practically strong engagement between the clasp and the rope.

Int. 12. Is there any different mode of operation in the engagement of the thimble described in the patent in suit with the rope, from that of the Stanley Rule and Level Company thimble with this rope?

110 Ans. No, sir; there is not.

Int. 13. Mr. Covert, the complainant, testified that the defendants were in the habit of marking their cattle ties with a tag on which were printed the words "Patented May 13, 1879." He then testified that he had examined the Official Gazette of the Patent Office, issued May 13, 1879, for patents for an improvement for either thimbles or rope clamps and had found none. Lest his oversight in not continuing the search to include other portions of cattle ties should lead to the conclusion that the defendants have used said label without right, I will ask you whether you know of any patent of May 13, 1879, issued to either of the defendants and relating to cattle ties? And if you do, please state the number of the patent and its title?

(Objected to, first, because the pretended extract of complainant's testimony does not contain the whole statement made by said wit-

ness, Covert, concerning said tag, and second, as irrelevant and immaterial:)

(Defendants' counsel states that in view of the admission by complainant's counsel that the matter enquired about is immaterial, he will not press the enquiry.)

111 Cross-examination:

X Int. 14. Have you ever testified as an expert witness in patent causes in the United States courts for the defendants herein, either as copartners or for the firm of Sargent & Company, of New Haven, prior to this date; if so, in how many causes have you been examined as expert witness for them or for the aforesaid company?

(Objected to as immaterial.)

Ans. I have. I cannot say how many cases.

X Int. 15. Please approximate the number, and also state whether or not in all cases in which you have testified as an expert witness, the defendants herein or said Sargent & Company, of New Haven, have been defendants therein?

(Objected to as immaterial.)

Ans. I cannot state without enquiry, as I have no record that will tell me. My business for this company extends over nearly twenty-five years?

X Int. 16. Do you mean by your last answer that you have been their expert-witness in patent causes for nearly twenty-five years?

(Question objected to as indefinite and not specifying whether the question refers to the defendants or to a New Haven corporation to which the complainant's counsel has referred in a preceding question.)

112 Ans. No, sir.

X Int. 17. Please state then what you did mean when in your answer to X Int. 15, you said my business for this company extends over nearly twenty-five years. State also more specifically what you mean by the words "this company."

(Same objection as to X Int. 15.)

Ans. I meant by my business with this company, that it is nearly twenty-five years since I commenced doing business with Sargent & Company, in connection with patents, part of which has been expert work, and I cannot now recall what cases I have testified in in their behalf. By this company I mean Sargent & Company, of New Haven, for whose account all the work for these defendants has been done. As to this case I do not know, as I have not yet made a charge or received a retainer.

Recess until 2 p. m.

2.00 O'CLOCK P. M.

Cross-examination resumed:

X Int. 18. Does the screw shown and described in the Covert patent in suit bind upon the rope which is inserted in the thimble,

or does the point of the screw pierce said rope entering between the strands thereof?

113 Ans. Whether or not, it enters between the strands depends upon the position of the strands with relation to the point. If one of the strands be presented under the point, then the point of the screw would first enter the strand itself. If the rope be so presented to the point of the screw that it stands in line between the strands, then the point would enter between the strands. But in any case the screw binds upon the rope which is inserted in the thimble. And the screw acts as a wedge to spread the rope so as to bind it in the thimble, and to the extent that the end of the screw enters the rope so as to make the space between the end of the screw and the opposite side of the thimble less than the diameter of the rope, the screw itself acts in conjunction with the frictional clamping to hold the rope. I do not wish to be understood as saying that in any case the rope can be held by frictional contact of the screw only as the end of the screw must enter and be admitted in the rope in order to permit any considerable resistance, and this irrespective of the shape of the end of the screw.

X Int. 19. Which in your opinion makes the most permanent, complete and effective fastening of a thimble on a rope, the screw with the sharp-pointed end which enters the rope, or a screw having a convex or blunt end which merely bears upon the rope?

(Objected to as not germane to the direct examination.)

111 Ans. By blunt end I understand you to mean a screw like the Stanley Rule and Level Company exhibit. In my opinion a screw having an end like this exhibit is much more complete and effective than a sharp conical point like that in the Covert patent; for the reason that the round-ended screw imbeds itself into the rope without materially displacing the fibres and certainly not breaking them, whereas with a sharp point the natural and unavoidable tendency would be to break or cut the fibres on entering. Again in the case of the convex-ended point like the Stanley Rule and Level Company exhibit, a larger body of the screw will be imbedded in the rope to form a resistance than could be with a sharp-pointed screw. Again in the case of a sharp-pointed screw, if the point enters as it may do between the strands of the rope, and happens to be not forced in so far as to make a perfect clamp, a heavy pull upon the rope will cause it to slip on the point and the point following between the strands like a screw. Whereas with a blunt point like the Stanley Rule and Level Company exhibit, no such action between the rope and screw can occur. Again with the sharp point like the Covert patent, a greater number of revolutions of the screw is necessary to bring the screw to the same extent of bearing, than would be required in the Stanley Rule and Level Company exhibit. Hence I say the convex-ended screw is the most complete and effective.

(All that part of the answer commencing "for the following reasons" objected to as not responsive to the question.)

115 X Int. 20. Please explain how, when the cattle tie is around the neck of the animal and the snap has been hooked in the eye of the thimble shown in the Covert patent in suit, the sharp point of the screw having entered between the strands of the rope, but not sufficiently far as to make a perfect clamp, and a heavy pull has been given the cattle tie, that the rope will slip on the point of the screw, the point of the screw following between the strands like a screw.

Ans. I will illustrate what I have said by a tie which I have in my hand, marked "Covert *vs.* Sargent *et al.*, sample of thimble for hitching devices, made by Covert Mfg. Co." I have turned the screw into the thimble and into the rope and between the strands, until substantially the whole of the conical part of the screw is inside the tube and so as to penetrate the rope to a considerable extent; now, if holding the rope in one hand, a pulling strain be applied to the sleeve, it will easily revolve on the rope and follow the twist. If, however, the screw be forced harder into the rope, so as to engage or imbed in the fibres of the rope, then no such slipping can be produced. I do not, however, wish to be understood as supposing such a movement of the thimble on the rope, either in the case of a sharp-pointed screw or a convex point, liable to occur in practical use when the halter is around the animal's neck. I only mentioned this to indicate the possibility with the sharp point, which could not occur with the blunt point, both being screwed in to the same extent.

116 (This answer is objected to on account of its not being responsive.)

X Int. 21. Question repeated.

A. I have explained as fully as I can do how the slipping may occur upon improper adjustment, and, I think, so clearly that the court will understand my meaning. If not, I certainly cannot do so.

X Int. 22. When you gave answer to X Int. 20, you held the cattle tie therein mentioned by you without the snap being inserted in the eye of the screw of the thimble, did you not?

Ans. I did.

X Int. 23. X Int. 20 referred to the following condition, to wit: When the cattle tie was about the animal's neck and the snap had been hooked in the eye of the thimble, shown in Covert patent in suit. Calling your attention again and particularly to that condition, please state how the rope will slip on the point of the screw, the point of the screw following between the stands of the rope like a screw.

Ans. Having no animal by which to illustrate, I can only say just as I have described in my answer, and just as a screw of a very quick pitch would be forced through a nut under a pull on the screw or nut. In the illustration, the twisted strands of the rope form the threads of the screw, and the sleeve the nut on that screw.

X Int. 24. If under the conditions named in X Int. 20
117 and 23, as you say the rope will slip on the point of the screw, the whole thimble would have to turn on the rope as a wheel does on its axis, would it not?

Ans. No, sir; it would not. The sleeve or nut, as it were, being held as you suggest, the rope or screw, as it were, would rotate under power applied to it.

X Int. 25. The pointed screw under the conditions named would have to follow the track between the strands, would it not?

Ans. It would be more properly stated, to state that the track between the strands would follow the point of the screw.

X Int. 26. Do I understand you to say to me by your last answer that the strands by the slipping of the sharp-pointed screw under the conditions named in X Ints. 20 and 23 would become parallel to each other in the direction of the length of the rope?

Ans. I think not, for I said, if the thimble were held as you suggested, the rope would rotate according to the spiral character of the groove between the strands. The strands being to a considerable degree flexible, there would doubtless be some circumferential yielding, so that the path might not be exactly in the normal spiral line of the groove between the strands.

X Int. 27. Please look at the Covert patent in suit, and state to what, in your opinion, the words contained in the claim thereof, to wit: "cast therewith," relate.

Ans. If it has any meaning to distinguish it from the
118 original claim, and from the reference cited by the examiner, it must refer to the screw-threads.

X Int. 28. I now hand you the "Defendants' Exhibit File-wrapper and Contents," of complainant's patent in suit, and also a certified copy of the letter of Alexander & Mason, dated February 7th, 1875, being one of complainant's exhibits, forming a part of said file-wrapper and contents. Please read said file-wrapper and contents and said certified copy of letter, and state after reading the same to what, in your opinion, said Alexander & Mason intended to refer when using the words "cast therewith," contained in the proposed claim set forth in said Alexander & Mason letter.

(Question objected to because the witness' opinion as to the private intentions of Messrs. Alexander & Mason in writing the letter in question, is incompetent.)

Ans. What Alexander & Mason might have intended by their argument, I am unable to determine; but what they did state in the claim, that the public might understand what the inventor claimed, is made, I think, more apparent than without it. For if they had made their claim in accordance with their argument, it would have been very differently worded. The claim states, describing the invention: "The tube, A, having a projection, *a*,
119 with interior screw-threads cast therewith." Now, I have said, and given my reasons for so saying, that that statement necessarily implies that the interior screw-threads shall be formed by casting; for were it not so, the words "cast therewith" would have

preceded the reference to the screw-threads, and then would have referred to the projection, or thickening of the tube, on one side. If this latter had been the case, then the reference and the cut would have shown identically the same tube and thickening. I note that Messrs. Alexander & Mason state that in the Wiard patent cited "the band is simply of sheet metal, and has no projection cast with it." This is not a fact, for the Wiard patent shows a thickening on the screw side. From these facts, I can only come to the conclusion, that after having drawn the claim qualifying the invention by requiring the interior screw-thread to be cast, that in making the argument which immediately follows, an error occurred by leaving out the words "interior screw-threads," which they had previously used in the claim contained in the same letter, and which I understand from the question is a fac-simile of the letter of amendment filed by Alexander & Mason, cancelling the original claim and introducing the new qualified claim.

X Int. 29. Leaving out of consideration your personal knowledge of the Wiard patent mentioned in said Alexander and Mason's letter and again reading said Alexander and Mason's letter of amendment, would or would you not construe said claim contained in said letter and being the claim of the patent in suit, so
120 that the words "cast therewith" would apply only to the projection *a* mentioned in said claim.

(Objected to as immaterial.)

Ans. I would not most certainly, for I should and must assume that the words interior screw-threads were intentionally and properly inserted in the claim, and if there be any error I should look for it in the evidently informal argument, rather than in an evidently studied claim to secure something in the shape of a patent.

X Int. 30. Please read the claim of the patent in suit, leaving therefrom the words "cast therewith," and state whether or not the same, with such omission, is not a proper and practical combination.

(Objected to as immaterial.)

Ans. "The combination of the tube A having the projection *a*, with interior screw-threads, * * * and the screw C having the eye D and the sharp point X for entering into the rope as and for the purposes set forth."

If by proper and practical combination you mean an operative combination, I answer yes. But if by proper you mean a proper claim to be granted, then I answer no, most emphatically, for it would not then contain a single feature of novelty in view of the state of the art as known at the time that application was filed.

X Int. 31. Do you find any other differences between the first or rejected claim as set forth in Defendants' Exhibit File-wrap-
121 per and Contents, Complainant's Patent, and the present claim of the patent in suit than you have stated in answer to Int. 6? If you do, please state what other differences you find.

Ans. I note that the rope is made an element of combination of

the original claim, and is not mentioned in the inserted claim. But this I do not understand to constitute an essential difference, as the device is the same whether the rope be present or not, but its presence must be implied and necessary for its use.

X Int. 32. Have you ever heard of or read about or seen a description or drawing of a rope clasp or thimble for hitching devices consisting of a tube to slip on the rope with a projection like the complainant's thimble, and a screw which had a sharp point at one of its ends to penetrate the rope, and a centrally located eye at its other end like the screw shown in complainant's patent in combination prior to the date of the application of the complainant for the patent in suit?

Ans. I can't tell when I first heard of such a construction.

X Int. 33. How do you know that the screw-threads are cast in the projection of the tube either in the Covert thimble now in evidence, or shown in the Covert patent in suit?

Ans. I have said nothing about the Covert thimble referred to, but I know that the patent calls for casting the threads in the thimble, because the claim of the patent so states.

122 X Int. 34. I understood you to say heretofore that the specification of the Covert patent in suit did not contain any suggestion or direction that the interior screw-threads should be cast. Is my understanding correct?

Ans. The specification does not state whether the thimble is to be cast, whether what the specification calls the enlargement and the claim calls the projection is to be cast, or whether the screw-thread is to be cast. In fact the specification does not describe any material of which any part of the device may be composed, or how it may be produced. The claim alone clearly describes the proposed construction and material of the thimble or tube.

JOHN E. EARLE.

Subscribed and sworn to, this 28th day of December, 1886, before me—

FRANCIS G. BEACH,
Special Examiner.

(Defendants rest.)

123 United States Circuit Court, District of Connecticut.

JAMES C. COVERT
vs.
GEORGE H. SARGENT and JOSEPH B. SARGENT. } In Equity.

I, Francis G. Beach, a notary public in and for the State of Connecticut, do certify that the foregoing depositions were taken before me, upon the days in the body of said depositions named, to be used on the part of the defendants in the above-entitled suit.

That said depositions were reduced to writing in the presence of and from the statements of the witnesses who subscribed said

depositions, and in the presence of the counsel for the respective parties.

That the witnesses were duly cautioned and sworn, and subscribed the said depositions before me.

That I am not of counsel or attorney for either of the par-
124 ties in said deposition and caption named, or in any way interested in the event of said cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this fifteenth day of January, 1887.

FRANCIS G. BEACH,
Notary Public.

[SEAL.]

125 UNITED STATES PATENT OFFICE.

JOHN WIARD, of New Britain, Connecticut.

Letters Patent No. 78849, dated June 9, 1868.

Improvement in Cattle Tie.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, John Wiard, of New Britain, in the county of Hartford, and State of Connecticut, have invented a new improvement in cattle tie; and I do hereby declare the following, when taken in connection with the accompanying drawings, and the letters of reference marked thereon to be a full, clear, and exact description of the same, and which said drawings constitute part of this specification, and represent, in—

(Here follows diagram marked p. 125*a*.)

Figure 1, a view of the tie complete,

Figure 2, the adjustable socket of the halter, and in

Figures 3 and 4, the construction of the snap by which the tie is secured.

This invention relates to an improvement in what is called
126 a "cattle tie," that is to say, a rope provided with the means for securing the same about the neck or horns of the animal; and the invention consists—

First, in the construction of the snap or hook by means of which the rope is secured around the neck or horns of the animal.

Second, in the adjustable socket, for the purpose of accommodating the tie to different necks or horns.

In order to the clear understanding of my improvement, I will fully describe the same as illustrated in the accompanying drawings.

A is the rope, such as is commonly used for tying cattle.

B is a socket, constructed so as to pass freely over the rope, as in Fig. 1, and in one side of which is fitted a thumb screw, C, so that when the said thumb screw is turned hard down upon the rope, the socket will be held firmly in that position, and may be adjusted to different positions on the rope by loosening the screw, and sliding the socket accordingly.

The head of the thumb screw C is constructed with a hole, D, at each end, so as to form a means of attachment of the end of the rope thereto. At the end of the rope a snap-hook is attached, by means of the ring or eye E, formed upon the body F of the hook.

The construction of the hook is as follows: The eye E and body F, with the hook G, are formed (in the position as denoted in Fig.

J. Wiard.

Cattle Tie.

No. 78,849. Patented Jun. 9, 1868.

Fig. 1.

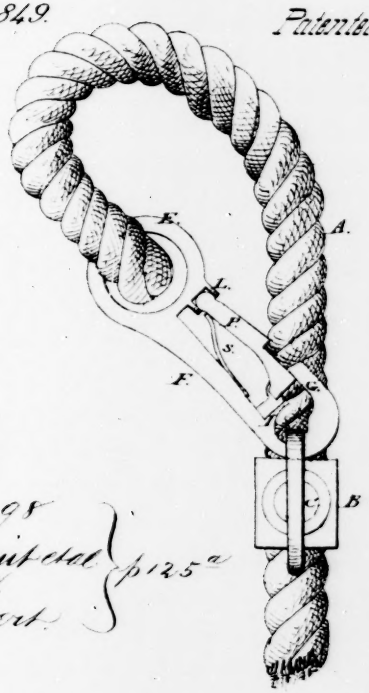
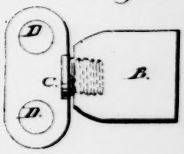


Fig. 2.



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Sargent et al
v.
Covert.
} p. 125

Fig. 3.

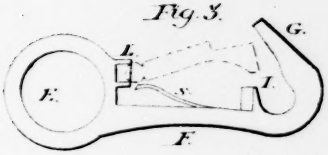


Fig. 4.



WITNESSES:

A. D. Tibbits

J. H. Shumway

INVENTOR:
John Wiard

By his Attorneys

John E. Earle

3) from any suitable material, as brass or malleable iron, and upon the body of the hook is formed a lug, I, projecting upward
127 towards the point G, the edge of the said lug toward the eye being of V form, and upon the base, at the eye, is constructed a seat, L, to receive the snap P, the said snap P being constructed as seen in Fig. 4, its rear end with ears *a*, which set into the recessed seat L, (or, if preferred, the recess may be in the seat, and a tenon on the end of the hook) so that the end of the hook will slip onto the said seat, and the forward end *d* made V shape, so as to set down over the lug I, as seen in Fig. 1, and when so set down, the seat holds one end in position, the lug I the other, and when the snap has been so placed, the point G is bent down, as seen in Fig. 1.

In Fig. 3, the tie is represented in red, as being inserted.

Upon the base, at any convenient point, I arrange a spring, S, the tendency of which is to support the snap against the hook, as in Fig. 1. Thus no riveting is required for the hinge of the snap, and it cannot by any possibility get out of place, and the lug I prevents whatever the hook is attached to from passing up to interfere with the spring.

The tie is placed around the animal's neck or horns, the socket B properly adjusted, and the thumb screw turned, so that the hook will pass into a hole in its upper end, or the end nearest the hook, so that whatever strain is brought upon the tie only serves to more firmly retain the thumb screw in its proper position; therefore, so long as the tie is around the animal's neck or horns, the screw of the socket cannot be loosened.

128 I do not wish to be understood as broadly claiming an adjustable cattle tie; but

What I do claim as new and useful, and desire to secure by letters patent, is—

1. The socket B, combined with the thumb screw C, when the said thumb screw is provided with a head, having a perforation at one or both ends, so far to one side from the centre or axis of the screw as that, when the tie is secured, the screw will be prevented from turning, substantially as herein set forth.

2. The hook G, formed upon the base, F, constructed with the lug I and seat L, and provided with an eye, E, or its equivalent, and combined with the snap P, when the said snap is attached to its seat L, and supported by the lug I, substantially as herein set forth.

JOHN WIARD.

Witnesses:

T. A. CONKLIN,

C. S. DANIELS.

129 In the Circuit Court of the United States for the Southern District of New York. In Equity.

At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Tues-

day the 29th day of March, in the year of our Lord one thousand eight hundred and eighty-seven.

Present: The Hon. William J. Wallace, circuit judge.

JAMES C. COVERT, Complainant,
ag'st
JOSEPH B. SARGENT and GEORGE H. SARGENT, Defendants.

This cause having been this day brought to a hearing on the pleadings and proofs therein, and having been argued by William H. King, counsel for complainant, and by John K. Beach, for defendants, and due deliberation had thereon, it is on motion of William H. King, for complainant, ordered, adjudged and decreed as follows:

That the letters patent for improvements in "clasps or
130 thimbles for hitching devices," granted to complainant, dated April 6th, 1875, and numbered 161,757, is good and valid.

That the said complainant was the first and original inventor and discoverer of the improvement in "clasps or thimbles for hitching devices," as described and claimed in the said letters patent, and that the said complainant is the exclusive owner of said letters patent.

That the defendants herein have infringed upon the said letters patent, and upon the exclusive rights of the complainant under the same.

And it is further ordered, adjudged and decreed that the complainant do recover of the defendants the profits, gains and advantages, which the said defendants have received or made, or which have arisen or accrued to them from the said infringements since the said date of said letters patent, and, also, that the complainant recover from the defendants the damages sustained by him by reason of said infringement.

And it is further ordered, adjudged, and decreed that the said complainant do recover of the defendants his costs and charges and disbursements in this suit, to be taxed.

And it is further ordered, adjudged and decreed that it be referred to John A. Shields, Esq., one of the masters of this court, who is hereby appointed at the request of counsel for complainant and defendants to ascertain, and take, and state, and report to the court, an account of the said profits, gains and advantages, and, also, the amount of damages sustained by said complainant from said infringement.

And it is further ordered, adjudged and decreed that the complainant on such accounting, have the right to cause an examination of the defendants, or either of them, *ore tenus*, or otherwise; and also the production of the books, accounts and documents of said defendants, and that the defendants attend for such purpose before said master from time to time as said master shall direct.

And it is also further ordered, adjudged and decreed that a perpetual injunction be issued in this suit against the said defendants and each of them, restraining them, their officers, agents, clerks, servants and all claiming or holding under or through them, from

making, or selling or using, or in any manner disposing of any of the inventions or improvements claimed in the said letters patent numbered 161,757, and from making, selling or using, or in any manner disposing of any "thimble for hitching devices" containing any of the inventions or improvements claimed in said last-mentioned letters patent pursuant to the prayer of the bill of complaint.

WM. J. WALLACE.

(Decree endorsed:) U. S. circuit court, southern district of N. Y. In equity. James C. Covert against Joseph B. Sargent & *al.* Decree. (File-mark:) U. S. circuit court. Filed May 29, 1887. Timothy Griffith, clerk.

131 United States Circuit Court, Southern District of New York.

JAMES C. COVERT
agʼst
JOSEPH B. SARGENT and GEORGE H. SARGENT. } In Equity.

Defendants' account showing the number of infringing thimbles sold by the defendants and the prices received from such sales, rendered in pursuance of the master's order of Nov. 4, 1887.

Total number of infringing thimbles sold, 21,559½ dozen, as per annexed schedules marked respectively A, B, C and D, to which reference is also made for the defendants' account of prices received.

The defendants have derived no profit from the sale of said infringing thimbles.

CITY AND COUNTY OF NEW YORK, } ss:
Southern District of New York. }

Thomas J. Atkins being duly sworn, deposes that the within account and the statements herein made relating to said account are correct to the best of his knowledge and belief, excepting only that said account does not in all respects show the extreme or lowest prices sometimes received by the defendants.

THOS. J. ATKINS.

Before me, this twenty-second day of November, 1887.
Subscribed and sworn to before me this 22d day of Nov., 1887.

JOHN A. SHIELDS, *Master, &c.*

Here follows page 484 of "Defendants' catalogue," marked "Covert *v.* Sargent, Defendants' Exhibit 'Illustrated Sheet,' November 22, 1887. J. A. S., master."

132 United States Circuit Court, Southern District of New York.

JAMES C. COVERT
agˈst
JOSEPH B. SARGENT and GEORGE H. SARGENT. } In Equity. No. 3768.

Testimony taken before J. A. Shields, Esq., as master, pursuant to order of court, dated March 29, 1887.

NEW YORK, *November* 4, 1887.

Present: William H. King, Esq., counsel for complainant, and John K. Beach, Esq., counsel for defendants, and George H. Sargent, the defendant.

Complainant's counsel asks the master to make an order compelling the defendants to make, render and produce a verified statement showing or tending to show in detail each and every "clasp or thimble for hitching devices," made or sold by them, their servants or agents, and the amount of money realized from such manufacture or sale, and a statement of the profits realized in each instance from the manufacture or use or sale of each of said clasps or thimbles.

The master so orders.

Adjourned by consent to Tuesday, November 22, 1887, at 11 a. m.

NEW YORK, *November* 22, 1887—11 a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

Defendants' counsel produced an account showing the number of infringing thimbles sold by the defendants between August 1, 1884, and January 1, 1887, and the nominal prices received for the same, and offers the same in evidence, to be marked "Defendants' Exhibit Defendants' Account, November 22, 1887, J. A. S., master."

(Objected to as incomplete: more complete accounts called for.)

THOMAS J. ATKINS, a witness called by the defendants, having been duly sworn, testified as follows:

1 Q. What is your name, age, residence and occupation?

133 A. Thomas J. Atkins; age, 49; residence, 631 Willoughby avenue, Brooklyn, and I am employed by Sargent & Co., of New York, as assistant manager of the business.

2 Q. How long have you been employed as assistant manager of Sargent & Co., of New York?

A. Over twenty years.

3 Q. The defendants' account contains four schedules, marked, respectively, A, B, C and D; state, if you know, what the reason was for that division of the account, and what is the meaning of the initials on each of said schedules.

A. The reason for the division was to facilitate the making up of the account; the initials are those of the young men who copied them; these young men who copied the accounts are employed by

Sargent & Co., of New York, and they can be produced whenever they are required.

4 Q. At the top of Schedule A I noticed a pencil memorandum of several letters and words, will you state what those letters and words are and what their meaning is?

A. The first letter is "S," which means that the goods were for "stock;" the second, "S. S." means "small special;" "small special" means small special orders; the next is "B. O. S. S.," which means back order; small special; the next is the word "city," which means goods for the city of New York and its vicinity; the next is "export," which means to export or send out of the country.

5 Q. Same question as to Schedules B, C, and D, with reference to the words "full case," and "direct"?

A. The words "full case" mean a full case of goods that we would reship without unpacking, and the word "direct" means to ship direct from Sargent & Co., of New Haven.

6 Q. In order that we may understand exactly what these schedules show, will you please explain, in detail, the first entry on Schedule A?

A. The entry is "1884, August 5th, 3 dozen cattle ties, 32"; right over the 32 is 87.50; following the 32 is 60 & 10; it is extended 88.10; this means that on August 5th, 1884, Sargent & Co., New York, bought of Sargent & Co., New Haven, 3 dozen cattle ties, No. 32, at 87.50 per dozen, less 60 & 10 discount, leaving a net price of 82.70 per dozen.

7 Q. These prices, indicated on the schedule, are the prices at which the goods were invoiced to you from Sargent & Co., of New Haven, are they not?

A. Yes, sir.

8 Q. Do these figures accurately represent the prices you received for the goods?

A. No, sir.

9 Q. In what respect are the figures incorrect in the schedules?

134 A. Where the goods were sold for less than the prices indicated on the schedule, the difference was charged back to Sargent & Co., of New Haven.

10 Q. Do you mean that you sometimes sold the goods for prices less than the prices shown in these schedules?

A. Yes, sir.

11 Q. Please state for what, if any, reasons you did not prepare schedules which would accurately show the exact price received by Sargent & Co., of New York?

A. Because, I think, it would be almost impossible to get a memorandum of all the various amounts charged back.

12 Q. Are you prepared to state approximately, and from your knowledge of the business, what was the average price actually received by Sargent & Co., of New York, for the various styles of goods comprised in these schedules?

A. As near as I can come to that, I should say about 20 per cent.

I should think that Sargent & Co., of New York, realized about 20 per cent. less than the amount shown on the schedule.

13 Q. In your answer to the ninth question you stated that when the goods were sold for less than the prices indicated in the schedule the difference was charged back to Sargent & Co., of New Haven, now do you mean by that that your firm paid Sargent & Co., of New Haven, for these goods exactly the same price which the firm itself received from them in each case?

A. Yes, sir.

14 Q. I observe that in these schedules the goods are described by numbers, please state, in a general way, what class of goods the numbers in the schedules refer to.

A. They refer to goods sold by Sargent & Co., of New York, upon which the thimble is placed.

15 Q. Do the numbers contained in those schedules refer to all the goods sold by the defendants in connection with which the infringing rope thimbles were used?

A. They do.

16 Q. Have you any catalogue, or part of a catalogue, which shows by illustrations what the goods are to which these numbers refer?

A. Yes, sir. (Witness produces a sheet, being pages 183 and 184 of defendants' catalogue, and containing wood cuts and printed descriptions of the infringing thimble and the goods to which it was applied.)

Defendants' counsel offers the same in evidence to be marked "Defendants' Exhibit Illustrated Sheet, November 22, 1887, J. A. S., master."

17 Q. Please state upon the record, by reference to "Defendants' Exhibit Illustrated Sheet," what the goods are to
135 which the numbers upon the schedule refer.

A. No. 21 in the schedule is the infringing thimble tinned; No. 23 is the same thing galvanized; No. 11 is the infringing tinned thimble with a snap; No. 13 is the same thimble galvanized; No. 41 is a jute rope cattle tie eight and one-half feet long; a cattle tie includes a thimble and a snap; No. 46 is a manilla rope cattle tie of eight and one-half feet in length; No. 31 is a jute rope cattle tie ten feet long; No. 36 is a manilla rope cattle tie ten feet long; No. 32 is a jute rope cattle tie ten feet long, having two snaps and two thimbles; No. 37 is a manilla rope cattle tie, having two snaps and two thimbles, ten feet long.

Adjourned to Tuesday, December 6, 1887, at 11 a. m.

NEW YORK, *December* 7, 1887.

Present: Counsel for the respective parties.

THOMAS J. ATKINS—examination continued:

18 Q. Since the last testimony have you made any further examination of the defendants' books for the purpose of discovering

how many cattle ties have been sold by the defendants; and if yea, with what result?

A. I had a further examination made, and have gone back to January 1, 1881, and have also had examination from January 1, 1887, to April 6, 1887, inclusive; that will make the total examination from January 1, 1881, to April 6, 1887; from January 1, 1881, to January 1, 1882, there were none found; from January, 1882, to August 18, 1884, there were 5,058¼ dozen found; from January 1, 1887, to April 6, 1887, inclusive, there were 1,174½ dozen found, making a total, including those already accounted for, of 27,792¼ dozen.

19 Q. Have you caused detailed schedules of these additional sales to be made, and if so, produce them?

A. I have and do.

Defendants' counsel requests that the additional schedules be annexed to the former account. Motion granted.

20 Q. In your twelfth answer, you stated that Sargent & Co., of New York, realized about 20 per cent. less than the amount shown in the schedule which you then produced—in view of these additional schedules now produced, do you desire to amend that estimate?

A. After further examination of these statements, I think
136 that estimate was a little high, and taking into consideration all the accounts produced, I would estimate that Sargent & Co. received about 12½ per cent. less than the prices in the schedules.

21 Q. It was testified in the record in final hearing the defendants changed the shape of the set-screw from a sharp-pointed screw to a blunt-pointed screw—does the defendants' account include the blunt-pointed as well as the sharp-pointed screws sold by defendants prior to April 6, 1887?

A. The account includes both the blunt and sharp pointed screws, and I had no way from the books of finding out the difference, and for that reason, included all we sold, both blunt and sharp pointed screws.

Cross-examined by Mr. KING:

22 Cross-Q. In answer to question twenty, you have stated concerning an estimate, that Sargent & Co. received about 12½ per cent. less than the prices in the schedules—how do you arrive at that estimate?

A. By looking over the statement, and being somewhat familiar with the prices that we obtained for the goods.

23 Cross-Q. Then as I understand, the defendants lost money by the sale of the goods specified in the schedules furnished by the defendants—am I correct?

A. No, sir; I mean that the difference between what the goods were sold for and the prices that they were invoiced at, was charged to Sargent & Co., of New Haven.

24 Cross-Q. Has it been, and is it now, customary for the defendants to pay Sargent & Co., of New Haven, the same prices for goods

which the defendants sell, that the defendants have received upon the sale of such goods?

A. It has been customary, and is customary now, for the defendants to pay Sargent & Co., of New Haven, just what they received for the goods purchased from them, and without any profit to the defendants; that is the custom, and has been in all cases where the goods were furnished the defendants by Sargent & Co., of New Haven.

25 Cross-Q. The defendants hire the premises No. 37 Chambers street, New York city, where they conduct the business—do they not?

A. Yes, sir; they do.

26 Cross-Q. And the defendants hire and pay their clerks, agents and salemen—do they not?

A. They do.

27 Cross-Q. And in fact pay all the expenses of running their immense business in New York city—do they not?

A. They do.

137 28 Cross-Q. Out of what do the defendants pay the rent, wages and expenses of conducting their business in New York city?

A. Out of the profits of goods they sell for parties other than Sargent & Co., of New Haven.

29 Cross-Q. What proportion of the goods sold by the defendants are furnished by Sargent & Co., of New Haven?

A. A little over half.

30 Cross-Q. Who takes the risks of collection of the amounts due upon sales of goods by the defendants which had been furnished by Sargent & Co., of New Haven?

A. The defendants.

31 Cross-Q. Then I understand you to say that the defendants carry on their large business in New York city, paying all the rent and necessary expenses, suffer and bear the loss of bad debts, sell the goods of Sargent & Co., of New Haven, without a profit, and then realize a profit only from a sale of about half the goods they carry and sell; is my understanding correct?

A. That is correct.

32 Cross-Q. Is Sargent & Co., of New Haven, a copartnership or a corporation?

A. A corporation.

33 Cross-Q. The defendants are copartners, are they not?

A. Yes, sir.

34 Cross-Q. Who are the principal stockholders of the corporation known as Sargent & Co., of New Haven?

A. Joseph B. Sargent, one of the defendants; the estate of Edward Sargent, I think, and George H. Sargent, the other defendant.

35 Cross-Q. What proportionate part of the whole of the capital stock of Sargent & Co., of New Haven, is owned by the defendants?

A. There is over half of it, I think, but I don't know how much over.

36 Cross-Q. Do the defendants issue a catalogue of the goods they sell?

A. They do.

37 Cross-Q. Is such a catalogue the joint issue of the defendants and of Sargent & Co., New Haven? What I mean by a joint issue is the same issued bearing the name of Sargent & Co., of New York and New Haven, and at the joint expense of the defendants and Sargent & Co., of New Haven?

A. The last catalogue, which was issued in 1884, I think, and is in operation now, has the name of Sargent & Co., of New York and New Haven, on the title page; I think the entire expense of that catalogue was paid by defendants.

138 38 Cross-Q. The advertisements of goods sold by the defendants bear also the names of Sargent & Co., of New York and New Haven, do they not, and have since January 1, 1882?

A. Some of them have; I cannot say that they all have.

39 Cross-Q. State the reason of the similarity of the firm name of the defendant and the corporate name of Sargent & Co., of New Haven.

A. I don't know as I can state anything.

40 Cross-Q. The public generally suppose that the defendants' firm and the corporation known as Sargent & Co., of New Haven, are one and the same, do they not?

A. I don't think they do.

41 Cross-Q. Why do you think so?

A. Because I am under the impression that it is pretty generally known that there is a difference.

42 Cross-Q. The names are similar?

A. Yes, sir.

43 Cross-Q. By the sale by defendants of goods furnished by Sargent & Co., of New Haven, the defendants in not realizing a profit are making a loss, are they not?

A. If the defendants did no other business except to sell what goods which they bought of Sargent & Co., of New Haven, they would be doing business at a loss.

44 Cross-Q. Then part of the profit which the defendants make by a sale of goods other than those furnished by Sargent & Co., of New Haven, is lost by the defendants in making sales of the goods furnished by Sargent & Co., of New Haven; is that a fact?

A. Yes, sir.

45 Cross-Q. Do you know whether or not the corporation of Sargent & Co., of New Haven, have paid a dividend upon its capital stock since January 1, 1882?

A. Yes, sir.

46 Cross-Q. State the amount of dividend and the amount of the capital stock and whether or not each of the defendants have been paid such dividends.

Defendants' counsel objects to that part of the question that inquires for the amount of dividends paid; first, as immaterial and irrelevant; second, because the witness is not the proper source of such information.

(Objection overruled; exception.)

A. The amount of capital stock is $325,000; I presume they get their dividends the same as the others; I only remember one dividend since 1882, and that was paid, I think, July, 1887, of $2 a share; the par value of each is $25; it was a dividend of 8 per cent.; my impression is that that is the only dividend that was declared since 1882.

139 47 Cross-Q. What is the usual percentage of profit which the defendants realized upon the sale of goods by them?

A. Well, I couldn't say, exactly; there is no usual percentage; I could not tell the average percentage; I can't answer that; I don't know what is the usual percentage of profit.

48 Cross-Q. What is the average percentage of profit realized upon the sale of goods by them?

(Objected to as immaterial and irrelevant; objection overruled; exception.)

Adjourned to tomorrow, December 8, 1887, at 10 a. m.

NEW YORK, *December* 8, 1887—10 o'clock a. m.

Met pursuant to adjournment.

Present, counsel as before.

Cross-examination of Mr. ATKINS continued:

A. From 1882 to 1887, I should judge the profits were from 10 to 12½ per cent.; that is the gross profit; in other words, the defendants get from 10 to 12½ per cent. more than we pay for the goods.

49 Cross-Q. Do you now remember whether or not dividends, other than the one you stated in your examination yesterday, were declared since January 1, 1882, by Sargent & Co., of New Haven; if you answer yea, please state when such dividends were declared and the amount of the dividends?

A. There was a dividend declared July 1, 1882, of $25 a share; in other words, a dividend of 100 per cent.

50 Cross-Q. Were the defendants stockholders of Sargent & Co., of New Haven, in January, 1882, and have they remained such stockholders continually up to the present time; if you answer yes, state whether or not the defendants, as such stockholders, received the amount of the dividend declared and paid July 1, 1882?

A. The defendants were stockholders on January 1, 1882, and have continued such ever since, and I presume they received the dividend declared July 1, 1882.

51 Cross-Q. What profits have Sargent & Co. generally realized from the sale of goods manufactured by them?

A. That I could not tell.

52 Cross-Q. State if you know, what is the usual percentage of profit realized by a manufacturer of such goods as the defendants sell, upon a sale by such manufacturer of such goods?

140 A. I don't know; I am not familiar.

53 Cross-Q. Do you know the cost of manufacturing

"thimbles," such as have been declared to infringe the patent in suit?

A. I do not.

54 Cross-Q. Do the defendants sell any goods on commission?

A. Yes, sir.

55 Cross-Q. What is the commission generally charged by the defendants for sale of goods sold by them on commission?

A. The defendants sell very few goods on commission, and what they do sell I think the commission is about 7½ per cent. on the gross receipts.

56 Cross-Q. In examining the schedules filed herein, I find great differences in the discounts on goods sold; in some cases the largest discounts have been allowed on a sale of the smallest quantity of goods; in other cases the smallest discounts have been allowed on sales of largest quantities of goods sold; please explain these several differences?

A. In some cases parties bought largely of other kinds of goods, which entitled them to the greatest discount on the entire line; and in some cases there were balances of large orders.

57 Cross-Q. Can you give the names of some of the purchasers of "thimbles," or goods to which the "thimbles" were applied, to whom defendants allowed discounts?

A. I will prepare a list of such names.

Redirect examination by JOHN K. BEACH, Esq.:

58 Redirect Q. Will you please produce a catalogue of goods sold by defendant?

A. I will and do.

Defendants' counsel offers catalogue in evidence, and same is marked "Defendants' Exhibit Defendants' Catalogue."

59 Redirect Q. You have said that defendants sold goods made by manufacturers other than Sargent & Co., of New Haven. If the defendants' catalogue is divided in such way as to make it possible to do so, will you please point out the page in that catalogue, where Sargent & Co.'s goods end and goods of other manufacturers begin.

A. Sargent & Co., of New Haven, manufacture all the goods from the beginning of the catalogue to page 602, inclusive, and the balance of the book from page 602 to 882 compose the goods
141 defendants deal in, other than Sargent & Co.'s; Sargent & Co., of New Haven, manufacture a line of undertakers' and coffin hardware not illustrated in this book, but for which they issue a separate catalogue; this undertakers' hardware business is done almost exclusively by Sargent & Co., of New Haven.

60 Redirect Q. You have spoken of a dividend declared by Sargent & Co., of New Haven, July, 1882, of $25 a share; do you know at what time before July, 1882, that company had declared its last previous dividend?

A. In 1875; in July.

61 Redirect Q. Please look at defendants' account for 1882, and

state how many dozen goods containing the infringing thimbles were invoiced to the defendants' firm to July, 1882.

A. One hundred and eighteen and one-twelfth dozens.

62 Redirect Q. Can you state about what proportion of the goods of this class, made by Sargent & Co., of New Haven, were invoiced to the defendants in 1882?

A. Sargent & Co., of New Haven, sold some of these goods, but I can't tell how many; the quantity, I think, was not large in 1882; I can't swear positively they sold any.

63 Redirect Q. Is this true of the whole period of time covered by the account?

A. During this whole period Sargent & Co., of New Haven, doubtless sold some of these goods; the proportion was small; I can't state the proportion.

It is stipulated by counsel for the respective parties, for the purpose of avoiding an expense and delay which a thorough examination of the books would require, that Sargent & Co., of New Haven, made a net profit from the manufacture and sale of the infringing thimbles of $1,500; that the defendants, as stockholders in said corporation, have derived jointly a profit of $1,000 from such manufacture and sale, to wit: That Joseph B. Sargent derived a profit of $750, and that Geo. H. Sargent has derived a profit of $250.

Adjourned to Wednesday, December 14, 1887, at 10 a. m.

NEW YORK, *December* 14, 1887—10 a. m.

Met pursuant to adjournment.
Present, counsel as before.

Recross-examination of THOMAS J. ATKINS:

64 Recross-Q. In answer to cross-question fifty-seven, you said you would prepare a list of some of the purchasers of thim-
142 bles, or goods to which the thimbles were applied, to whom the defendants allowed discounts, have you prepared such a list; if yea, will you produce it?

A. I have had a list prepared, and will produce it; this list does not contain the names of all the parties to whom these goods have been sold.

List produced by this witness is offered in evidence by complainant's counsel, and marked "Complainant's Exhibit Partial List of Defendants' Customers, December 14, 1887, J. A. S., master."

Adjourned to Tuesday, December 27, 1887, at 11 a. m.

NEW YORK, *January* 17, 1888—11 a. m.

Met pursuant to adjournment.
Present, counsel as before.

ARTHUR B. STEWART, a witness, called on behalf of the complainant, having been sworn, testified as follows:

1 Q. Please state your name, age, residence, and occupation.

A. Arthur B. Stewart; am 41 years of age; book-keeper and general clerk; I reside at West Troy, N. Y.

2 Q. By whom are you employed—by the complainant?

A. Yes, sir.

3 Q. Under what firm name does the complainant do business?

A. Covert Manufacturing Company.

4 Q. How long have you been employed as book-keeper and general clerk for the complainant?

A. About seven years last past.

5 Q. What has been and what is the business of the complainant?

A. Manufacturing and selling saddlery and general hardware.

6 Q. What have been and what are your duties as book-keeper and general clerk for complainant?

A. Keeping the books; tending to the correspondence; assisting in making the cost of the different articles of manufacture; also making up the cost of the catalogues and price-lists, and attending to the general business of the office.

7 Q. As such book-keeper and general clerk for the complainant, have you or have you not been compelled to learn the various prices of the goods sold by the complainant?

143 A. I have.

8 Q. Has the complainant under said firm name made and sold "thimbles for hitching devices" under letters patent, issued to James C. Covert, bearing date April 6, 1875, and numbered 161,757—if you answer yea, please state when said manufacture and sales first commenced, and whether or not such manufacture and sales still continue.

A. Yes; the complainant was engaged in manufacturing and selling "thimbles" when I entered his employ, and still continues.

9 Q. Has the complainant ever licensed any one to manufacture and sell said thimbles under the patent in suit?

A. No, sir.

10 Q. Has the complainant at all times since January 1, 1880, been able financially, and every other way, to supply the demand of the public for "thimbles" made in accordance with and under the patent in suit?

A. Yes, sir.

11 Q. Please state the list prices at which the said "thimbles" have been sold by the complainant from the time of the first sales thereof.

A. At the time I entered the complainant's employ, the list price was $12 a gross, and still remains at that figure.

12 Q. Please state what has been the cost of manufacture by complainant of said "thimbles for hitching devices," from the time you first entered his employ to the present time.

Witness refers to memorandum.

A. At the time I entered the complainant's employ, the computations we had then as to the cost of the "thimbles" was $1.76 a

gross; the next computation I have here was July, 1886; it was computed then at $1.68 per gross.

13 Q. Please state how or in what manner, the cost of the manufacture of said "thimbles" has been calculated—in other words what has been calculated in making up said cost?

A. The cost of the iron, tapping the "thimbles," cutting the pins or screws, and entering the same; tinning, packing, boxes, labels, and a proportionate share of the cost of running the business.

14 Q. Has the word "patented" and the date "April 6, 1875," been stamped or placed either on the "thimbles," or the packages that contained the "thimbles," made by the complainant?

A. Yes; on the boxes and on the tags attached to the different styles of rope goods on which the "thimbles" were used in making up.

144 15 Q. Has the complainant ever advertised the sale of said "thimbles;" if you answer yea, please state in what manner such advertisement has been made.

A. Yes; in the newspapers, periodicals and in catalogues, and circulars.

16 Q. Has the complainant's firm issued catalogues in which an illustration of said "thimbles," and the prices thereof been inserted?

A. Yes.

17 Q. Since 1880 how many catalogues, containing the illustrations and prices have been issued by the complainant under the name of the "Covert Manufacturing Company"?

A. About eight or nine; about one for each year, except one year; and one year we issued two, and one year not any.

18 Q. Will you produce a copy of each of the catalogues issued by complainant under the firm name of "Mfg. Co." since the year 1880?

A. Yes; most of them; I will produce them now.

Nine catalogues are introduced by the witness in evidence. One without date, supposed to be prior to 1881, one of 1881, one of 1882, one of July, 1883, one of January, 1885, one of July, 1886, one of July, 1887, one of January, 1888, and the same are marked "Def'ts' Catalogues, January 15, 1888, J. A. S., master."

19 Q. In all these several catalogues the list price is stated at $12 per gross?

A. Yes, sir.

20 Q. What has been the discounts allowed by the complainant upon the sale of said "thimbles," by the Covert Manufacturing Company?

A. From the time I entered the complainant's employ until July, 1884, the discount was to jobbers 50 per cent., and to retailers 35 per cent.; from 1884 to July, 1886, the discount to jobbers was 60 and 10, and to retailers 50 and 10; it was then changed in July, 1886, to 75 per cent. to jobbers, and 60 and 10 to retailers, and that is the discount at the present time.

21 Q. State the quantities of said "thimbles" one must buy of the complainant in order to get the several discounts.

A. Those were the discounts, no matter how large or small the quantity was purchased; the only difference being whether a jobber or retailer bought.

22 Q. State the number of "thimbles" sold by the complainant each year, commencing from January 1, 1881, to the present time.

A. (Referring to memorandum taken from the books.) I find as follows:

145 In 1881, 13,521 dozen.
In 1882, 14,747 dozen.
In 1883, 15,345 dozen.
In 1884, 12,497 dozen.
In 1885, 13,167 dozen.
In 1886, 21,112 dozen.
In 1887 to April 6, 4,054 dozen.
The total is 94,443 dozen.

Adjourned to January 18, 1888, at 10 a. m.

NEW YORK, *January* 18, 1888—10 a. m.

Met pursuant to adjournment.
Parties appearing as before.

Direct examination of ARTHUR B. STEWART continued by WM. H. KING, Esq.:

23 Q. Please state the amount of profits the complainant has realized since January 1, 1880, and since you have been in his employ, and are now realizing from the sale of "thimbles" only, made under the patent in suit.

A. From the time I went in his employ to July, 1884, the complainant realized a net profit from "thimbles" alone, when sold to jobbers, of $4.24 a gross; when sold to retailers, $6.04 per gross; from July, 1884, to July, 1886, when sold to jobbers, $2.64 a gross; when sold to retailers, $3.72 per gross; from July, 1886, to the present time, when sold to jobbers, $1.32 per gross; when sold to retailers, $2.64 per gross.

24 Q. Please state the amount of profits the complainant has realized, and is realizing from the sale of cattle ties and horse ties, and of all the rope goods upon which the "thimbles" are placed.

A. In 1881 the profits on horse ties, 75 cents per dozen.
In 1882 the profits on horse ties, 83 cents per dozen.
In 1883 the profits on horse ties, the first six months was 88 cents per dozen, and the balance of the year, 64 cents per dozen.
In 1884, 61 cents per dozen.
In 1885, 47 cents per dozen.
In 1886, 37 cents per dozen.
In 1887, 37 cents per dozen.
Cattle ties in 1881, 51 cents per dozen.
In the year of 1882, 53 cents per dozen.

First part of 1883, 57 cents per dozen.
146 Latter part of 1883, 41 cents per dozen.
In the year 1884, 39 cents per dozen.
In the year 1885, 29 cents per dozen.
In the year 1886, 27 cents per dozen.
In the year 1887, 31 cents per dozen.

25 Q. Is or is not a "thimble" necessary upon horse or cattle ties of this description to enable the snap to be hooked therein, and rope passed around the animal's neck?

A. Yes, sir.

26 Q. Has the complainant since January 1, 1880, been compelled to increase the discount to reduce the net price of the "thimble for hitching devices" made and sold by him under the patent in suit?

A. Yes, sir.

27 Q. Why was he compelled to increase the discount to reduce the net price of the "thimble" made and sold by him?

A. By the competition in sale of the infringing "thimble" of Sargent & Co., and the rope goods on which the infringing "thimbles" were attached.

28 Q. I hand you "Complainant's Exhibit a Partial List of Defendants' Customers," please examine said list, and after such examination, state who of the customers named in said list as having bought infringing "thimbles" of defendants formerly bought the thimbles made under complainant's patent of the complainant.

A. Wolff, Lane & Co., Pittsburgh, Pa.; W. Bingham & Co., Cleveland, Ohio; Lockwood, Taylor & Co., Cleveland, Ohio; Morley Bros., East Saginaw, Mich.; Smith, Seltzer & Co., Philadelphia, Pa.; Morgan & Beach, Fort Wayne, Ind.; O. C. Eaton & Co., Clinton, Iowa; Buhl, Sons & Co., Detroit, Mich.; Whittaker & Co., Toledo, Ohio; Bostwick, Brown & Co., Toledo, Ohio; S. W. Park & Co., Warren, Ohio; Markley, Alling & Co., Chicago, Ill.; Gorden, Kurtz & Co., Indianapolis, Ind.; Reiser & Reitz, Chicago, Ill.; H. Wilcox & Bro., Baltimore, Md.; E. Jenkins & Son, Baltimore, Md.; John Hapham, Sterling, Ill.

29 Q. Have orders which have been given to the complainant for "thimbles" for rope goods, or rope goods having thimbles thereon, been canceled because of Sargent & Co. selling that class of goods at less price than the complainant?

A. Yes, sir.

30 Q. Were such cancellations of said orders made in writing? If you answer yea, will you produce such writing?

A. They were, and I produce some.

31 Q. In the ordinary course of business of complainant, has he received letters making complaints in regard to the prices for
147 his goods having "thimbles" thereon, because the defendants were selling "thimbles" or rope goods having "thimbles" thereon at a less price than he, the complainant, was selling his goods?

A. Yes, sir.

32 Q. Will you produce some of such letters as were sent to the complainant in the usual course of his business?

A. I will and I can produce some of them.

Witness produces in answer to the two last questions the following letters:

From John Thomas, Cedar Rapids, Iowa, dated October 14, 1885.

From Hamilton & Mathews, Rochester, N. Y., dated February 26, 1881; March 13, 1881; March 1, 1882; Nov. 3, 1882.

From Ducharme, Fletcher & Co., Detroit, Mich., dated respectively March 28, 1884; December 4, 1884; December 8, 1884.

From Everson, Frisselle & Co., Syracuse, N. Y., September 18, 1885.

From W. Bingham & Co., Cleveland, Ohio, October 31, 1882.

From Russell & Erwin Manufacturing Co., New York city, respectively dated October 11, 1882; October 27, 1882; also one of October 22, 1880; also one of December 30, 1887.

From Burns & Degnan, St. Louis, Mo., January 27, 1881.

From W. S. Hansell & Jones, Philadelphia, Pa., April 28, 1882.

From Charles F. Rengier, Jr., Lancaster, Pa., March 28, 1882.

From Vance & Kirby, Chattanooga, Tenn., April 13, 1882.

From Lewis W. Towt, New York city, April 15, 1882.

From J. C. Johnson & Co., San Francisco, Cal., January 6, 1882.

From George De B. Keim & Co., Philadelphia, Pa., November 19, 1881; also one January 21, 1881; and November 26, 1881.

From Rogers, Lewis & Co., Fort Wayne, Ind., March 17, 1882.

From P. Hayden, Newark, N. J., January 19, 1881.

From Haydens & Allen, St. Louis, Mo., January 19, 1881.

From Rogers, Engle & Co., Dayton, Ohio, April 8, 1881.

There are other letters which I do not happen to have with me at present.

The above letters are offered in evidence and marked "Complainant's Exhibit from 1 to 27, inclusive, January 18, 1888, J. A. S., master."

148 Defendants' counsel objects to the following letters for the reason that they contain no reference to the subject-matter in dispute in this accounting, to wit: Nos. 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26 and 27.

It is stipulated that the complainant may retain the original letters which have been offered in evidence, and that copies thereof may be in lieu of such originals filed with the master.

(Objection sustained; exception by complainant's counsel.)

33 Q. Please calculate and state what profit the complainant, as owner of the patent in suit, would have made if he had supplied that portion of the demand for "thimbles for hitching devices" only, which was supplied by the defendants as appears by their account filed herein.

A. Two thousand eight hundred and sixty dollars and fifty-five cents.

34 Q. How have you arrived at that calculation and amount as given in your last answer?

A. By taking from the account, as filed by the defendants, the number of "thimbles" which as appears therein they sold, and multiplying, the same by the net profit which the complainant realized at the date of sale, as appears by the schedules or account filed by defendants from the sale of "thimbles only."

35 Q. Please calculate and state the amount of the profit upon the number of thimbles only sold by the defendants since January 1, 1880, as appears by their account filed herein, the complainant would have made if he had not been compelled by reason of the infringement of the defendants to make this reduction in the net price of the thimbles sold by him as testified before by you.

A. Four thousand two hundred and sixty-one dollars and nine cents.

36 Q. How have you arrived at the calculation and amount as given in your last answer?

A. I have taken from the account, as filed by the defendants, the number of thimbles sold by them; I have then multiplied that amount by the net profit which the complainant made upon the sale of the thimbles only before he was compelled to make the first reduction in 1884, as testified to before by me.

37 Q. Please calculate and state the amount which the complainant would have made if he had supplied that portion of the demand for cattle ties and other rope goods upon which "thimbles" were placed, which was supplied by the defendants, as appears by their account filed herein.

A. Five thousand eight hundred and eighty-seven dollars and fifty-six cents.

149 38 Q. How have you arrived at the calculation and amount as given in your last answer?

A. I have taken from the account, as filed by the defendants, the number of horse ties, cattle ties, and other rope goods upon which "thimbles" are placed, which, it appears in said account they sold, and multiplying the same by the net profit which the complainant realized at the date of sale, as appears by the account filed by the defendants from the sale of horse ties, cattle ties and other rope goods having thimbles on, sold by the complainant. In making these calculations I have, by reference to the price-list of Sargent & Co., the defendants herein, being one of the exhibits of this accounting, ascertained by the numbers giving description of the said goods on said account which were "thimbles" and which were rope goods having thimbles thereon.

39 Q. Please calculate and state the amount of the profit upon the number of cattle ties, horse ties and other rope goods having thimbles thereon, sold by the defendants since January 1, 1880, as appears by their account filed herein, the complainant would have made if he had not been compelled by reason of the infringement of defendants, to make the reduction in the net price of the goods sold by him as heretofore testified by you?

A. Nine thousand three hundred and twenty-eight dollars and fifteen cents.

ARTHUR B. STEWART.

Sworn to before me this 10th day of January, 1888.

JOHN A. SHIELDS, *Master, etc.*

Adjourned to January 26, 1888, at 11 a. m.

United States Circuit Court, Southern District of New York.

JAMES C. COVERT, Complainant,
agʼst
JOSEPH B. SARGENT and GEORGE H. SARGENT, Defendants.

Parties met in pursuance of stipulation at the office of William H. King, complainant's solicitor, No. 31 North Pearl street, Albany, New York, on January 31, 1888, and in the absence of the master it is consented that the evidence be taken before Edward W. Rankin, a notary public.

Complainant appeared by Wm. H. King, his solicitor, and
150 of counsel. Defendants by John K. Beach, their solicitor and of counsel.

ARTHUR B. STEWART's examination continued:

The witness now makes answer to question thirty-three as follows: A. Two thousand eight hundred and sixty dollars and fifty-five cents.

In answer to question thirty-five as follows: A. Four thousand two hundred and sixty-one dollars and nine cents.

In answer to question thirty-seven as follows: A. Five thousand eight hundred and eighty-seven dollars and fifty-six cents.

In answer to question thirty-nine as follows: A. Nine thousand three hundred and twenty-eight dollars and fifteen cents.

And it is consented that the master may insert these answers in the proper places in the record.

40 Q. How have you arrived at the calculation and amount as given in answer to question number thirty-nine?

A. I have taken from the account, as filed by the defendants, the number of cattle ties, horse ties, and other rope goods having thimbles thereon, sold by the defendants since January 1, 1880, as appears by their account filed herein, and multiplied said amount by the net profit which the complainant made from the sale of cattle ties, horse ties and other rope goods upon which thimbles were placed, before he was compelled to make the first reduction in 1884 as heretofore testified to by me.

41 Q. Please state the total amounts of profits that complainant would have made upon the sale of the goods mentioned in the account of the defendants herein, if he had supplied the public with the goods mentioned in said account of the defendants at the reduced prices heretofore mentioned by you?

A. Eight thousand seven hundred and forty-eight dollars and eleven cents.

42 Q. Please state the total amounts of profits that complainants would have made upon the sale of the goods mentioned in the account of the defendants herein, if he had supplied the public with the goods mentioned in said account of the defendants and had not made the reduction in prices heretofore testified to by you?

A. Thirteen thousand five hundred and eighty-nine dollars and twenty-four cents.

Cross-examination of witness by Mr. BEACH, of counsel for defendants:

43 Cross-Q. In 1880 when you entered the employ of
151 the Covert Manufacturing Company, was that company a partnership or a corporation?

A. A partnership.

44 Cross-Q. Who were the members of the firm?

(Objected to as immaterial and irrelevant.)

A. James C. Covert, Henry Wakeman. I am not positive whether there were any other members at that time or not.

45 Cross-Q. Do you know of any changes which were made in the membership of the firm after 1880?

(Same objections.)

A. Yes; Henry Wakeman retired from the firm about five years ago.

46 Cross-Q. Did not the complainant's brother, Mr. Madison Covert, have some interest in the business at any time since 1880?

(Same objections.)

A. Yes, sir.

47 Cross-Q. You have said that the thimbles sold by the Covert Manufacturing Company were marked with the word "patented," and the date of the patent on the labels of the boxes containing them and upon tags attached to the goods upon which the thimbles were placed; will you please produce samples of such labels and tags at your own convenience and annex them to your deposition marking them for identification?

A. Yes, sir.

48 Cross-Q. When you say in your deposition that the cost of manufacture or the profit upon sales was such as you have stated, you mean, do you not, that such was the cost or profit to the Covert Manufacturing Company?

A. Yes.

ARTHUR B. STEWART.

Subscribed and sworn to before me this 31st day of January, 1888.

EDWARD W. RANKIN,

[L. S.] *Notary Public, Albany County, N. Y.*

JAMES HAMIL, called as a witness for complainant and being first duly sworn by the notary, testified in answer to interrogatories, as follows:

1 Q. What is your name, age, residence and occupation?

A. James Hamil, 45 years; residence, West Troy, New York; occupation, dealer in hardware, stoves and tin-work.

2 Q. Where is your place of business?

A. One hundred and fifty-nine Broadway, West Troy, New York.

152 3 Q. Where and for how long a time have you been a dealer in hardware, stoves and tinware?

A. In stoves and tinware for twenty years; in hardware since 1877; all of the time in West Troy, New York.

4 Q. Do you know the firm of Sargent & Co., of New York and New Haven?

A. Yes, sir.

5 Q. Are you personally acquainted with either of the defendants, Joseph B. Sargent and George H. Sargent?

A. I know one of the Sargents; the one who is in the New York place of business; I think it is George H. Sargent; it is the one whom I meet when I go down to New York.

6 Q. Have you been a customer of Sargent & Co., of New York?

A. Yes, sir.

7 Q. For how long a time?

A. Since 1877 to the present time.

8 Q. What have you bought of said Sargent & Co., of New York?

A. Hardware, shelf goods, locks, knobs, snaps; shelf hardware generally.

9 Q. Are you acquainted with any of the salesmen of said Sargent & Co., of New York?

A. Yes, sir.

10 Q. With what salesman are you acquainted?

A. R. R. Breese.

11 Q. Has said Breese ever called on you at your place of business, in West Troy; if so, for what purpose?

A. Yes, sir, he has for the purpose of selling hardware sold by Sargent & Co., of New York.

12 Q. During any of his visits to your place of business, at West Troy, have you or have you not had any conversation with said Breese in regard to "thimbles" for hitching devices?

(Objected to by counsel for defendants unless limited to matters within the authority of his agency as salesman.)

A. Yes, sir.

13 Q. What were the objects of his visits at these times to you at your place of business, at West Troy?

A. To sell the goods of Sargent & Co., of New York.

14 Q. Please state, as near as you can remember, what the conversations were which took place between Mr. Breese and yourself, at your store, in regard to thimbles for hitching devices?

(Same objection as to question number twelve.)

A. He said Covert had no patent on the thimble, for it had been made by the Stanley Rule and Level Company for quite a number of years.

153 15 Q. Anything about Sargents going to make Covert's goods?

(Same objection and further objection as leading.)

A. He said the Sargents were going to make a full line of Covert's goods.

16 Q. State, if you remember, about when this conversation with Mr. Breese took place?

A. Between three and four years ago; about four years ago.

17 Q. State if you know why Mr. Breese made these statements to you?

A. I was joking with him, having said to him that Sargent & Co. would have to pay for them; for the thimbles, I mean.

18 Q. Is that all the conversation you remember?

A. Yes, about all.

Cross-examination of witness by Mr. BEACH:

19 Cross-Q. In the term "shelf hardware" you include, do you not, a general assortment of small articles of hardware?

A. Yes, sir.

20 Cross-Q. Are you certain that this conversation with Mr. Breese was as long ago as four years?

A. I think between three and four years; I think about four years.

JAMES HAMIL.

Subscribed and sworn to before me this 31st day of January, 1888.

EDWARD W. RANKIN,
[SEAL.] *Notary Public, Albany County, N. Y.*

HALBERT D. HULL, called as a witness for the complainant, and being first duly sworn by the notary, made answer to interrogatories propounded by Mr. KING, complainant's counsel as follows, to wit:

1 Q. What is your name, age, residence and occupation?

A. Halbert D. Hull, 57 years, residence No. 29 Seventh street, Troy, N. Y.; occupation, selling hardware and agricultural instruments.

2 Q. Are you a member of any firm; if so, of what firm?

A. No, sir; I run my own business under the name of H. D. Hull.

3 Q. How long have you been in business as a hardware dealer?

154 A. I have been in business as such for twenty-five years.

4 Q. I now hand you a "cattle tie-iron," known as the

"Sargent-Hull cattle tie-iron," have you ever seen similar devices; if so, about what time and where?

A. I have seen similar devices, I should think, about eleven years ago at Troy, N. Y., in my store; I bought and sold them there.

5 Q. Have you bought and sold the "Sargent-Hull cattle tie-iron" during the last eleven years?

A. I do not think I have; I have no recollection of buying them since the Covert thimble came out, which is about eleven years ago.

6 Q. Did you or did you not find any difficulty in selling the said "Sargent-Hull cattle tie-iron"?

A. I did find difficulty; yes, sir.

7 Q. What was such difficulty which you found?

A. The difficulty of fastening the tie to the rope so as to secure it against slipping, endangering the choking of the animal; the difficulty in fastening the "iron" to the tie was in getting a rope of the proper size; if the rope was too large, the screws are not long enough to hold it together; if the rope is too small, it would slip through, and by reason of the curve in the "iron" there was a difficulty in getting the rope into the "iron;" if the "iron" slipped at all, it would cause the rope to shir up and choke the animal; another difficulty I found in selling the said "iron" was that the "Covert thimble" came into market, and was considered far better for the purposes, and displaced the "Sargent-Hull cattle tie-iron" with me.

8 Q. How did you manage to dispose of the "Sargent-Hull cattle tie-iron" after the "Covert thimble" came upon the market?

A. By manufacturing ties from rope that we would buy, and putting the "Sargent-Hull cattle tie-iron" on them myself.

9 Q. Have you ever bought and sold what is known as the "Covert thimble," made under the Covert patent in this suit, bearing date April 6, 1875?

A. Yes, sir.

10 Q. When did you commence to buy and sell the said "Covert thimble"?

A. My impression is some nine or eleven years ago.

11 Q. Have you bought and sold the said "Covert thimble" exclusively during the past nine or eleven years?

A. No, sir.

12 Q. What other "thimble" have you bought and sold during the past nine or eleven years?

A. I have bought thimbles from Sargent & Co., the de-
155 fendants in this case, which have the appearance of "Covert's thimble."

13 Q. Was the "thimble" that you bought of defendants, as stated in your last answer, similar to the "thimble" now an exhibit in this case, and marked "Complainant's Exhibit F, E. W. R., N. P., sp. ex."?

A. It was similar to that thimble; I think I commenced to buy them about five years ago.

14 Q. Please state why you bought the thimble like "Complainant's Exhibit F" of defendants.

A. Because I could buy the thimble like "Complainant's Exhibit

F" of the Sargents cheaper than I could buy the "Covert thimbles" of Mr. Covert.

15 Q. I now hand you the socket known as the "Wiard socket" and screw therein, which is an exhibit in this suit, and marked "Complainant's Exhibit H, E. W. R., N. P. & sp. ex." Please state your opinion as to the practicability of the said socket for use upon horse and cattle ties. Before answering this question please also state what experience you have had in the manufacture of horse and cattle ties, so that the court may judge of your fitness and qualification to make an answer to said question.

A. I have had a man in my employ for years, who makes horse and cattle ties under my supervision and direction; my opinion of the "Wiard socket and screw" is that it is not good for anything.

16 Q. Please give your reasons why the "Wiard socket and screw" is not good for anything when used upon horse and cattle ties.

A. My first objection is to the flat end of the screw where it strikes the rope; this should be pointed so as to penetrate the rope, whereas the end of this, the "Wiard screw," being flat and smooth, would not hold the rope sufficiently to prevent slipping; another reason is that a slight turn on the end of the screw when the tie is on the animal's neck might loosen it enough so that it would slip and choke the animal by slipping and decreasing the size of the loop.

Cross-examination of the witness by Mr. BEACH, of counsel for defendants:

17 Cross-Q. How lately have you bought cattle ties or thimbles for cattle ties from the defendants?

A. I should think not within a couple of years.

18 Cross-Q. Did you ever sell the "Wiard thimble" or ties with such a thimble thereon?

A. No.

156 19 Cross-Q. Did you ever have any practical experience with such a thimble on ties for cattle or horses?

A. No, sir.

HALBERT D. HULL.

Subscribed and sworn to before me this 31st day of January, 1888.

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany County, New York.

The further taking of testimony herein was at this point adjourned by consent until February 1, 1888, at 9:30 a. m., at the same place.

EDWARD W. RANKIN,
[L. S.] *Notary Public, Albany County, N. Y.*

WEDNESDAY, *February* 1, 1888, at 9:30 a. m.

The parties appeared, pursuant to adjournment, at the office of William H. King, complainant's solicitor, No. 31 North Pearl street, Albany, N. Y.; said complainant by William H. King, his solicitor and of counsel, and the defendants by J. K. Beach, of counsel.

WILLIAM L. BURGESS, called as a witness for the complainant, and being first duly sworn by the notary, testified and made answer to interrogatories propounded to him by WILLIAM H. KING, complainant's solicitor, as follows, to wit:

1 Q. What is your name, age, residence and occupation?

A. William L. Burgess; age, 30 years; residence, No. 1 Myrtle avenue, Albany, N. Y.; occupation, hardware dealer.

2 Q. Are you a member of any firm; and if so, of what firm, under what name, in what business and where located?

A. I am a member of the firm of William T. Burgess & Son, doing business under that name at No. 146 South Pearl street, Albany, N. Y.; in the hardware business.

3 Q. How long have you been a member of the firm of William T. Burgess & Son?

A. Since January 1, 1886.

4 Q. By whom were you employed prior to January 1, 1886, and in what capacity?

A. By the said William T. Burgess, at No. 146 South Pearl street, Albany, N. Y., as his buyer.

5 Q. How long have you been employed by said William T. Burgess, as his buyer?

157 A. For five years prior to January 1, 1886, continuously.

6 Q. Has your firm, during the past two years, bought any cattle ties from the defendants?

A. Yes.

7 Q. Prior to January 1, 1886, did you purchase cattle ties from the defendants for the said William T. Burgess?

A. Yes.

8 Q. Please state why you, as buyer for William T. Burgess, or as a member of the firm of William T. Burgess & Son, bought cattle ties of the defendants.

A. My reason was that at that time Mr. Covert would not sell directly to the retailers, but sold through jobbers in the city, and that we could not get the price necessary to come in competition with the jobbers, who were retailers also; and that when we could get a better price from other parties we took advantage of it; and there was no other thimble on the market, except these two, that I know of; I mean the thimbles of complainant Covert and the thimbles of defendants.

9 Q. In answer to question number eight you said: "We could get better prices from other parties." To what other parties did you refer in making that answer?

A. To the defendants, doing business under the name of Sargent & Co., New York.

10 Q. When did you first begin to buy either for your firm or as buyer for William T. Burgess of the defendants?

A. I think it was about three years ago.

11 Q. Did each of the cattle ties which you bought of the defendants have a thimble thereon?

A. Yes, sir.

12 Q. Has your firm bought cattle ties continuously of the defendants since you have been a member thereof?

A. We have.

13 Q. Can you state how many cattle ties having thimbles thereon which either the said William T. Burgess or your firm have bought of the defendants since first you commenced buying of the defendants?

A. No, I can't with any degree of certainty.

14 Q. Were the cattle ties which you bought of the defendants like the defendants' cattle tie now shown you, which was an exhibit in this case?

A. They were not; the last lot had no point on the end of the screw of the thimble; this screw on the exhibit now in my hand is similar to the screws in the thimbles on the cattle ties which I bought prior to the last lot.

15 Q. When did you buy the last lot of cattle ties of the defendants?

A. About September or October, 1887.

158 16 Q. Were you a witness for the complainant in this case before the granting of an injunction herein?

A. I was.

Cross-examination of witness by Mr. BEACH, of counsel for defendants:

17 Cross-Q. You have said that Mr. Covert would not sell cattle ties to you as a retailer at a price which would enable you to compete with other parties to whom he sold the same goods at a lower price. Do you mean that the difference in price was such that it was not possible to trade in his cattle ties with profit?

A. Well it might be possible to trade with profit, but that is not what we look at in trade. We buy goods of the party who offers them at the lowest price.

18 Cross-Q. Have you since September or October, 1887, bought any cattle ties of the complainant?

A. No.

WM. L. BURGESS.

Subscribed and sworn to before me, this 1st day of February, 1888.

[L. S.] EDWARD W. RANKIN,
Notary Public, Albany County, N. Y.

STATE OF NEW YORK, } ss.:
City and County of Albany, }

I, Edward W. Rankin, a notary public within and for the county and State aforesaid, and special examiner by consent in the above-entitled cause, do hereby certify that on the 31st day of January, 1888, I caused to come before me Arthur B. Stewart and James Hamil and Halbert D. Hull to testify as witnesses in the above-mentioned cause; and on the 1st day of February, 1888, I caused

William L. Burgess to come before me as a witness in said cause; that William H. King, Esq., was present as counsel for complainant and John K. Beach, Esq., as counsel for defendants; that said witnesses and each of them were by me first sworn to testify the truth, the whole truth and nothing but the truth; that the testimony of said witnesses and that of each of them was reduced to writing by myself in the presence of said witnesses respectively and signed by said witnesses and by each of them in my presence; and I do further certify that I am not of counsel nor related to the witnesses or the parties hereto nor otherwise interested in the result of this suit.

In witness whereof I have hereunto set my hand and my official seal this 1st day of February, 1888.

[L. S.] EDWARD W. RANKIN,
Notary Public in and for the City and County of Albany and State of New York and Special Examiner.

159 United States Circuit Court, Southern District of New York.

JAMES C. COVERT
ag'st } In Equity. 2nd Suit.
JOSEPH B. SARGENT *et al.*

In pursuance of notice the parties appeared before me this 14th day of April, 1888, at 11 a. m., the complainant by Wm. H. King, his solicitor and counsel, the defendants by John K. Beach, their solicitor and counsel.

GEORGE H. SARGENT, being present as a witness for the complainant, and being first duly sworn, testified in answer to interrogatories propounded to him by WILLIAM H. KING, counsel for complainant, as follows:

1 Q. What is your name, age, residence and occupation?

A. George H. Sargent; age, 59 years; residence, New York city; occupation, a merchant.

2 Q. Are you one of the defendants?

A. I am.

3 Q. Are the defendants copartners? If so, under what name and where do they do business?

A. The defendants are copartners doing business under the firm name of Sargent & Co., as dealers in hardware at No. 37 Chambers street, New York city.

4 Q. Please give the names of all customers of the defendants who have bought "thimbles" thereof, which, by a decree of this court, have been declared as infringing the patent in suit, other than those already furnished upon the examination herein, by the defendants.

A. I can't give the names excepting upon referring to the books of the defendants, which books I will furnish.

5 Q. Will you please give the names of such customers as taken from the books of the defendants?

Defendants' counsel states that the names inquired for are scattered through several hundred books, and form but a small percentage of the total transactions rendered therein; that he understands the purpose of complainant's counsel in asking the question is to lay the foundation for a claim, that if the defendants had not sold the infringing articles to such customers the complainant would have sold them; and for the purpose of avoiding the expense and delay, which an attempt to ascertain all the names of defendants' customers from their books would involve, he consents,

160 that for the purpose of computing damages in this case, and for no other purpose, the entire sales of the defendants may be considered to have been made to customers of the complainant as to such articles, this consent being given on condition that complainant's counsel will accept the same in lieu of the inquiry as to the names of the defendants' customers.

Adjourned subject to new notice.

United States Circuit Court, Southern District of New York.

JAMES C. COVERT *dq'st* JOSEPH B. SARGENT *et al.* } In Equity.

NEW YORK, *April* 20, 1888.

Present: W. H. King, Esq., of counsel for complainant, and John K. Beach, Esq., of counsel for defendants.

Complainant's counsel states that the consent of the defendants' counsel, offered April 14, 1888, and which is written in full in the record herein under that date, being insufficient, in so far that it affords complainant no opportunity to verify the account that defendants filed herein of the number of infringing thimbles sold by them, and of the amount of moneys received by the defendants from the sale of such infringing thimbles from the purchasers thereof, complainant's counsel declines to accept such consent, and thus deprive him of the benefit which might accrue to him by a proper verification of said account.

Defendants' counsel states that, as appears by the record, a stipulation was made between counsel on December 8, "for the purpose of avoiding the expense and delay which an examination of defendants' books would require," that the defendants have derived a profit of $1,000 from the manufacture and sale of the infringing thimbles, and that in view of that stipulation he submits that the complainant as to that extent waived a verification of the defendants' account.

Defendants' counsel states that he has no desire to conceal the books of the defendants from inspection, but admits that in view of the stipulation of December 8, and in view of the offer made by him April 14, 1888, that whatever inspection of the defendants' books is had, ought to be conducted with the least possible

161 annoyance to the defendants, and he offers to produce and turn over for inspection to complainant's counsel all the

books of the defendants during the period covered by the accounting.

Complainant's counsel requests defendants' counsel to produce the books.

Defendants' counsel states that the books will be produced at such time and place as may be agreed upon.

Adjourned subject to notice.

NEW YORK, *May* 24, 1888—11 a. m.

Met pursuant to agreement.

Present: Wm. H. King, Esq., for complainant, and John K. Beach, Esq., for defendants.

FRANK W. PIERRON, a witness sworn for complainant.

Direct examination by Mr. KING:

1 Q. What is your name, age, residence and occupation?

A. Frank W. Pierron; 33 years of age, residence 119 Vernon Ave., Brooklyn. Am a clerk by occupation.

2 Q. By whom are you employed?

A. By Sargent & Co., of New York city.

3 Q. What is the business of Sargent & Co., and where have they heretofore conducted, and where do they now conduct their business?

A. Dealers in hardware, 37 Chambers street, New York city.

4 Q. For how long a time have you been employed as clerk by Sargeat & Co. in New York city?

A. Seven years about, in their employ altogether. All the time as a clerk.

5 Q. Please give the names of the several members of the firm of Sargent & Co., by whom you are employed?

A. I suppose that Joseph B. Sargent and George H. Sargent, the defendants in this cause, are the only partners in this firm, and have been since I have been employed by that firm, but I don't know this of my own knowledge.

6 Q. What have been and what are your duties as clerk of said Sargent & Co.?

A. Entry clerk and adjuster of accounts.

7 Q. Please look at the papers which I now show you and state what they are?

A. They are the papers that I filled up at the dictation of Mr. King and Mr. Stewart.

162 8 Q. When were those papers prepared by you?

A. Between April 20th and 30th, 1888, and on the respective dates which are found upon the top of each sheet.

9 Q. Please state fully all the items of which the accounts which you prepared between April 20th and April 30th, 1888, and which are now before you, consist?

A. The date of sale by the defendants Sargent & Co. of thimbles and rope goods having thimbles thereon, the name and residence

of purchasers of said thimbles and rope goods, the quantity and description of the goods purchased, the discount allowed upon each purchase, and the net amount charged on each purchase as called off to me by Mr. King and Mr. Stewart,

10 Q. In whose handwriting are the papers which you state were prepared between April 20 and April 30, 1888, and which are now before you?

A. In my handwriting.

11 Q. Who, if any one, was present at the several times you wrote such papers, and when were such papers written by you?

A. Mr. King counsel for the complainant now present, and Mr. Stewart now present. They were prepared at the office of Sargent & Co., the defendants, at No. 37 Chambers street, New York city, and on the several dates which are respectively placed upon the tops of each of these papers.

12 Q. From what were the several items set forth in the several papers which you wrote between April 20 and April 30, 1888, which are now before you, taken?

A. From the books of Sargent & Co., the defendants herein, either Mr. Stewart or Mr. King reading the items to me, and I taking them down as they were read to me by one or the other of them, the account which the defendants have heretofore filed herein, being present at the time and being examined with the books by either Mr. King or Mr. Stewart.

13 Q. Are the said several papers which you have stated you wrote between April 20 and April 30, 1888, and which are now before you, in your opinion true and correct transcripts from the books of Sargent & Co., the defendants herein.

Defendants' counsel objects on the ground that as the witness appears simply to have acted as an amanuensis, his opinion if he has any, can have no foundation which could make it material.

A. I can only repeat as I have said before that I simply noted them down at the dictation of Mr. King and Mr. Stewart, they reading from the books of Sargent & Co.; and I suppose they read the books correctly.

163 14 Q. Can you state whether or not the extra 10 per cent. of discount (being a discount allowed for cash payments) was in all cases actually allowed to purchasers of goods mentioned in the accounts of the defendants filed herein, as stated in said accounts and in the papers which you say you wrote between April 20th and April 30th, 1888, which are now before you?

A. To the best of my knowledge they were.

15 Q. Did every purchaser pay cash at the time and in the manner required by Sargent & Co., to entitle them to the extra 10 per cent. allowed for prompt payment?

A. I know nothing of the payment of the accounts, but to the best of my knowledge the 10 per cent. was always allowed, whether payments were made on time or not.

16 Q. Can you state who, of the customers of the defendants who purchased the goods mentioned in the several papers written by

you between April 20th and April 30th, 1888, and now before you, were jobbers, and who were retailers?

A. I cannot.

17 Q. Can you state whether or not the defendants made any difference in the discount upon thimbles, or rope goods having thimbles thereon, which they sold, when sold to a jobber or retailer?

A. I have no personal knowledge of their allowance of discount.

Complainant offers in evidence the several papers which the witness says he wrote between April 20th and April 30, 1888, and the same is marked "Complainant's Exhibit Defendants' Partial Account, with Names of Customers, May 24, 1888, J. A. Shields, master."

18 Q. Please state whether or not the defendants have salesmen travelling for them selling their goods?

A. They do, I suppose, they have twelve such travelling salesmen, but I am not certain as to the number.

19 Q. Please state the custom of defendants in regard to making sales, whether the sales are made indiscriminately to jobbers or retail dealers, or any one who desires to purchase?

A. I don't know what their custom in that regard is.

FRANK W. PIERRON.

Sworn before me—

JOHN A. SHIELDS, *Master, etc.*

164 Mr. ARTHUR B. STEWART, recalled for complainant, was examined by Mr. KING, and testified as follows:

1 Q. Are you the same person who has heretofore testified in this suit in favor of the complainant herein?

A. I am.

2 Q. I now hand you Complainant's Exhibit "Defendants' Partial Account with the Names of Customers, May 24, 1888, J. A. Shields, master." Please state by whom the same was written, where and when, and in whose presence the same was written.

A. They were written by Mr. Frank W. Pierron the last witness, at the office of Sargent & Co., No. 37 Chambers street, New York city, in the month of April last, in the presence of William H. King, complainant's counsel and myself.

3 Q. From what was Complainant's Exhibit "Defendants' Partial Account of the Names of Customers, May 24, 1888, J. A. Shields, master," prepared?

A. From the books of Sargent & Co., which were then present.

4 Q. Was the Complainant's Exhibit "Defendants' Account" present at the time Mr. Pierron wrote the several papers, and was such defendants' account being then verified from the books of the defendant?

A. Yes, sir.

5 Q. How was this data furnished Mr. Pierron, which is written

upon Complainant's Exhibit "Defendants' Account with Partial Names of Customers, May 24, 1888"?

A. Either Mr. King or I would read it from the books of Sargent & Co., defendants, to Mr. Pierron, who wrote it down as directed.

6 Q. Please state the custom of complainant as to his making sales of goods made and sold by him?

A. The complainant issued catalogues and discount sheets which were sent to the jobbing trade, the majority of whom sent in their orders to complainant direct, the orders were filled and the goods shipped from complainant's factory; a portion of the trade was also visited by complainant's agents, who solicited and received orders for complainant's goods, which were filled by complainant; complainant also largely advertised in the trade journals.

7 Q. To whom would the complainant make sales?

A. To the jobbing trade; no retail trade is solicited, although the complainant has a retail discount which is sometimes sent to the retailers when discounts are solicited by them.

8 Q. In what respect does that retail discount differ from that furnished by complainant to the jobber?

165 A. It is from 25 to 33⅓ per cent. higher than that quoted to the jobber.

9 Q. How would the jobbing trade to whom the complainant sold the goods distribute the goods that they bought?

A. By sending their agents to visit the retail trade and solicit orders for complainant's goods, which were filled by the jobbers with goods purchased from the complainant.

Recess taken till 2 p. m.

After recess.

10 Q. What do you mean by the term "jobber"?

A. Dealers who purchased from the manufacturer in quantities to sell to the retail trade at what is termed "wholesale prices."

11 Q. What do you mean by the term "retailers"?

A. The dealer who purchases from the jobber to sell to the consumer at retail prices.

12 Q. Has the complainant had complaints from his jobbing customers relative to Sargent & Co. underselling to his customers' retail trade?

A. Yes, both verbally and by letter; some of the complaining letters received by complainant have been already offered in evidence.

13 Q. Give the names of the jobbers who purchased thimbles and rope goods having thimbles thereon of Sargent & Co., as per their statements rendered and now exhibits herein, who formerly were customers of the complainant.

A. Sargent & Co. have furnished no complete list of such jobbers, consequently I don't know how many there are.

14 Q. Give as many as you can, names and residences of such jobbers who purchased thimbles and rope goods, having thimbles thereon of Sargent & Co., as appears by their several statements

rendered, and now exhibits herein, who formerly were customers of the complainant.

A. From a cursory examination of the books of complainant, I find the following-named persons and their residences, which I believe to be a correct list of such jobbers: Miller Bros. & Fletcher, Minneapolis, Minn.; Rock City Saddlery Co., Nashville, Tenn.; W. J. Negus & Co., New York city; Louderbach, Gilbert & Co., New York city; Gray, Fall & Co., Nashville, Tenn.; Corbett Bros., Nashville, Tenn.; C. A. Litterer, Nashville, Tenn.; W. H. Crossman & Bro., New York city; Wm. G. Short & Co., New York city; Arkell & Douglas, New York city; Markt & Co., New York city; Blair Bros. Peoria, Ill.; W. C. Hannah, Peoria, Ill.; Shields & Bro.,
156 Philadelphia; Biddell Hardware Co., Philadelphia; Smith, Seltzer & Co., Philadelphia; Logan, Gregg & Co., Pittsburgh; Bindley Hardware Co., Pittsburg; Wolff, Lane & Co., Pittsburgh; Smith, Tibbitts & Co., Portland, Me.; W. H. Smith Hardware Co., Parkersburgh, W. Va.; J. L. Stichter, Reading, Pa.; Weaver, Palmer & Richmond, Rochester, N. Y.; Weaver & Gauss Hardware Co., Rochester, N. Y.; Hamilton & Mathews Co., Rochester, N. Y.; Watkins, Cottrell & Co., Richmond, Va.; R. McCarthy & Sons., Syracuse, N. Y.; Kennedy, Spaulding & Co., Syracuse, N. Y.; C. G. Smith, St. Paul, Minn.; Scheffer & Rossmer, St. Paul, Minn.; Farwell, Ozman & Jackson, St. Paul, Minn; J. Harpham, Sterling, Ill.; Baker & Hamilton, San Francisco, Cal.; Bostwick, Brann & Co., Toledo, O.; Whittaker & Co., Toledo, O.; H. D. Hull, Troy, N. Y.; Greer & Laing, Wheeling, W. Va.; T. Hutchisson, Wheeling, W. Va.; J. G. Smith, Winona, Minn.; Merriam Bros., Waverly, N. Y.; P. A. & S. Small, York, Pa.; Morris Hardware Co., Youngstown, O.; Stambaugh & Thompson, Youngstown, O.; L. A. T. Wartman & Co., Allentown, Pa.; F. Hersh & Son, Allentown, Pa.; L. Keeper & Son, Atchison, Kan.; L. & H. Guppinger, Boone, Iowa; B. S. Green, Bloomington, Ill.; Lerch Bros., Baltimore, Md.; E. Jenkins & Sons, Baltimore, Md.; Ferguson & Adsit, Burlington, Vt.; G. I. Hager, Burlington, Vt.; A. Wilcox & Bro., Baltimore, Md.; Anderson & Ireland, Baltimore, Md.; Croker & Ogden, Binghamton, New York; Plumb & Hawley, Bridgeport, Connecticut; Johnson Brothers, Cincinnati, Ohio; W. Bingham & Co., Cleveland, O.; George Worthington & Co., Cleveland, O.; Lockwood, Taylor & Co., Cleveland, O.; McIntosh, Good & Huntington, Cleveland, O.; C. E. Armstrong, Clinton, Iowa; O. C. Eaton, Clinton, Iowa; Wells & Nellegar, Chicago, Ill.; W. Blair & Co., Chicago, Ill.; Markley, Alling & Co., Chicago, Ill.; A. E. Seeberger, Chicago, Ill.; E. Hunt's Sons, Chicago, Ill.; A. F. Risser & Co., Chicago, Ill.; Hibbard, Spencer, Bartlett & Co., Chicago, Ill.; McCune, Loomis & Griswold, Columbus, O.; Kilborn, Jones & Co., Columbus, O.; G. M. Maris & Co., Columbus, O.; J. S. Abbott & Co., Columbus, O.; John Thomas, Cedar Rapids, Iowa; Howland & Almy, Cedar Rapids, Iowa; C. J. Swift & Co., Corry, Pa.; Watkins & Pearse, Columbus, O.; J. H. & F. A. Sells, Columbus, O.; Andrew Treadway & Son, Dubuque, Iowa; J. D. Seeberger, Des Moines, Iowa; Buhl, Sons & Co., Detroit, Mich.; Black Hardware

Co., Detroit, Mich.; Standard Bros., Detroit, Mich.; Sickles, Preston & Co., Davenport, Iowa; Westfall, Hines & Co., Dubuque, Iowa; Padgitt Bros., Dallas, Texas; Tennison Bros., Dallas, Texas; Elgin Hardware and Harness Co., Elgin, Ill.; Morley Bros., E. Saginaw, Mich.; Basher, Damee, Rose & Co., Elmira, N. Y.; Pratt & Co., Elmira, N. Y.; G. E. Plumb, Elmira, N. Y.; Boettcher Hardware Co., Evansville, Ind.; J. D. Taylor, Freeport, Ill.; J. W. Bell, Fort Wayne, Ind.; G. W. Seavey, Fort Wayne, Ind.; Morgan & Beach, Fort Wayne, Ind.; Pfeiffer & Schlatter, Fort Wayne, Ind.; Ruhl Bros., Findlay, Ohio; Foster, Stevens & Co., Grand Rapids, Mich.; Gordon, Kurtz & Co., Indianapolis, Ind.; Hanson, Van Camp & Co., Indianapolis, Ind.; L. S. Winne & Co., Kingston, N. Y.; Clark Bros. & Co., Keokuk, Iowa; Lloyd & Clark, La Crosse, Wis.; Barron Hardware Co., Lafayette, Ind.; Gustin & Harpham, Lincoln, Neb.; G. M. Steinman, Lancaster, Pa.; Spitznagle & Kennedy, Lafayette, Ind.; John Pritzlaff Hardware Co., Milwaukee, Wis.; Wm. Frankfurth Hardware Co., Milwaukee, Wis.; J. P. Patrick, McGregor, Iowa; W. H. Van Nostrand, Muscatine, Iowa.

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Cross-examination by Mr. BEACH:

15 Cross-Q. Have you since the last session had a full opportunity to examine all the books of the defendants containing the names of customers to whom the infringing thimbles and rope goods having such thimbles attached to them were sold?

A. Books purporting to contain those names have been submitted to me for examination in the presence of Mr. Pierron, an employee of Sargent & Co., the defendants in this suit, and also in the presence of William H. King, complainant's counsel.

16 Cross-Q. Did you observe anything while you were examining such books which led you to suppose that the defendants were not giving you a satisfactory opportunity to verify the Exhibit "Defendants' Account," and to obtain the names and residences of their customers?

A. No; we had such opportunity as we asked for at that time.

17 Cross-Q. Will you prepare a list showing how many of the customers whose names you have given in reply to question fourteen, who continued to be customers of the complainant during the period of this accounting?

A. I could not do so without a reference to complainant's books.

18 Cross-Q. I suppose some of these firms whose names you have given did continue to buy goods of the complainant down to April 6, 1887, did they not?

A. I cannot say positively.

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Redirect by Mr. KING:

19 Q. During the verification of the account as filed by the defendants herein, which you have heretofore stated you have made between April 20 and 30, 1888, with the assistance of Mr. Pierron and Mr. King, counsel for complainant, were there any errors found in said defendants' account, and if so, state wherein such errors ex-

isted, and if such errors have been corrected in the Complainant's Exhibit "Defendants' Partial Account with Names of Customers, May 24, 1888, J. A. S., master"?

A. Yes, a number of errors was discovered, being principally errors of omission which I believe have been corrected in "Defendants' Partial Account, May 24, 1888, J. A. S., master." I did not consider the percentage of errors very large as far as the errors were discovered.

ARTHUR B. STEWART.

Sworn, before me.

JOHN A. SHIELDS, *Master, etc.*

United States Circuit Court, Southern District of New York.

JAMES C. COVERT
agʼst
JOSEPH B. SARGENT and GEORGE H. SARGENT.

Testimony taken on the part of the defendants *taken* before John A. Shields, master, pursuant to an order of court, New York, June 26, 1888.

Present: William H. King, Esq., of counsel for complainant and John K. Beach, of counsel for defendants.

HENRY B. SARGENT, a witness produced on the part of the defendants, being duly sworn, testified as follows:

1 Q. What is your name, age, residence and occupation?

A. Henry B. Sargent, aged 37 years; I reside at New Haven, Conn., and am vice-president of Sargent & Co., of New Haven, Conn.; this Sargent & Co. is a joint stock company organized under the laws of the State of Connecticut, and are the manufacturers of the goods in suit sold to the defendants.

2 Q. Has your company since April 9, 1887, the date of the injunction, made and sold rope thimbles to the defendants herein?

169 A. Yes, under a modified form.

3 Q. Will you produce a sample of such thimbles?

A. I will and do.

The thimble produced offered in evidence and marked "Defendants' Modified Thimble."

(Objected to as immaterial and irrelevant.)

4 Q. What if any difference, is there between the cost of manufacturing the rope thimbles which your company made and sold to the defendants, and which were held to be an infringement of the patent in suit, and the cost of manufacturing such thimbles as the Exhibit "Defendants' Modified Thimble."

(Objected to as immaterial and irrelevant.)

Defendants counsel states that in view of said objection he will not require the witness to answer said question.

HENRY B. SARGENT.

Sworn before me—

J. A. SHIELDS, *Master, etc.*

THOMAS J. ATKINS, recalled on the part of the defendants:

1 Q. Are you the same Thomas J. Atkins who has already testified in this accounting?

A. I am.

2 Q. Please look at Defendants' Exhibits "Defendants' Modified Thimble," and say whether the defendants have sold such thimbles since the date of the injunction herein.

(Objected to as immaterial and irrelevant.)

A. They have.

3 Q. Have the defendants sold any other style of rope thimbles which had a screw entering into the side of the tube for the purpose of clamping the rope in the tube than the one just inquired about, since the date of the injunction?

A. They have not.

4 Q. Have the defendants' sales of rope thimbles of the class referred to in question three increased or diminished since the date of the injunction?

(Objected to as indefinite, irrelevant and immaterial, and that no foundation had been laid for asking said question.)

A. I think they have increased.

Cross-examined by WM. H. KING, Esq.:

5 Q. Have the defendants since the date of the injunction
170 herein issued any catalogue in which any illustration of the rope thimble sold by them, like Defendants' Exhibits "Defendants' Modified Thimble" has been placed?

A. The catalogue has not been issued yet, but has been got up. The catalogue having an illustration like the exhibit referred to in the question has not been issued yet.

First sentence of answer is objected to as not responsive, and counsel moves to strike out the same.

Redirect examination by J. K. BEACH, Esq.:

6 Q. Do you mean by your last answer that defendants have in preparation a catalogue containing an illustration of the rope thimble sold by them like Defendants' Exhibit "Defendants' Modified Thimble"?

A. I do; that is just what I mean.

THOMAS J. ATKINS.

Sworn to before me—

J. A. SHIELDS, *Master, etc.*

Defendant rests.

COMPLAINANT'S EXHIBIT No. 1.

Office of John Thomas, 49 First avenue.

CEDAR RAPIDS, IOWA, *October* 14, 1885.

Messrs. Covert Manufacturing Co.

GENTS: Please cancel my order to your agent for halter leads and cattle ties. Your agent said that eighty and one hundred and twenty-eight was as low as Sargent & Co. was selling. I find they are selling the goods at seventy-two cents for seven-sixteenths halter leads and one hundred and seventeen for one-half-inch cattle ties. If you meant to make the same prices, ship them along. I gave Sargent & Co. an order today for some.

Yours. JOHN THOMAS.

COMPLAINANT'S EXHIBIT No. 2.

Hamilton & Mathews, 27 Exchange street.

ROCHESTER, N. Y., *November* 3, 1882.

Covert Manufacturing Co.

GENTLEMEN: Please ship us at once by New York Central & Hudson River railroad, thirty-six dozen rope cattle ties. Same as the last, and at the same prices and terms.

We presume you have seen the late price-list issued by Sar-
171 gent & Co. on their snaps similar to yours, and we would like to know whether you propose to compete and sell your goods as low as the others are being sold.

Please let us know what your policy will be in the future in regard to these goods. We hope you will put us in a position to compete.

Yours truly, HAMILTON & MATHEWS.

COMPLAINANT'S EXHIBIT No. 3.

Ducharme, Fletcher & Company.

DETROIT: *November* 28, 1884.

Covert Manufacturing Co., West Troy, N. Y.

GENTLEMEN: Sargent's jute cattle ties are being sold by their agents in this market at a price we cannot meet with your goods; can you not put us in position to do something? A prompt reply is earnestly requested.

Very respectfully yours,

DUCHARME, FLETCHER & CO.

(Dictated by Edwards.)

COMPLAINANT'S EXHIBIT No. 4.

Ducharme, Fletcher & Company.

DETROIT, *December* 4, 1884.

Covert Manufacturing Co., West Troy, N. Y.

GENTLEMEN: Will you kindly advise us in answer to ours of the 28th ult.? We are feeling the competition referred to very strongly. Our travelers state they find it necessary to make the same price on your goods as made on Sargent's.

Very respectfully yours,

DUCHARME, FLETCHER & CO.

(Dictated by Edwards.)

COMPLAINANT'S EXHIBIT No. 5.

Ducharme, Fletcher & Company.

DETROIT, *December* 8, 1884.

Covert Manufg. Co., West Troy, N. Y.

GENTLEMEN: Replying to your favor of the 5th, would say that the jute cattle ties have been sold all this season by Messrs. Black & Owen at $1.60 net; and it is impossible for us to get more money for your goods. The result has been that we are obliged to make $1.60 a common price.

Regarding Sakby, Pharis & Co.'s business, we know little about it, as we do not come in competition with them, they being
172 woodenware dealers and confining their trade to grocers and harness-makers. If they attempted to sell the retail hardware trade in this section, they would soon feel the action of Black & Owen.

Very respectfully yours,

DUCHARME, FLETCHER & CO.

(Dictated by Edwards.)

COMPLAINANT'S EXHIBIT No. 6.

Everson, Frisselle & Co.

SYRACUSE, N. Y., *September* 18, 1885.

Covert Manufacturing Co.

Please ship us one barrel cow ties, No. 80, and oblige,

E., F. & CO.

Don't let Sargent beat your prices.

COMPLAINANT'S EXHIBIT No. 7.

W. Bingham & Co.

CLEVELAND, OHIO, *October* 31, 1882.

Covert Mfg. Co., West Troy, N. Y.

GENTS: Did you not overcharge us on snaps invoiced October 5th? Other makers of covered snaps are selling them for much less. An early reply will oblige.

Yours truly, W. BINGHAM & CO.

COMPLAINANT'S EXHIBIT No. 8.

Russell & Erwin Manufg. Co., 45 and 47 Chambers street.

NEW YORK, *October* 11, 1882.

Covert Mfg. Co.

GENTS: Yours 28th June in regard to snaps was duly received and contents noted. We would ask now if you contemplate any changes in prices.

We find the other makers of covered snaps are selling largely and interfering with sales of yours.

RUSSELL & ERWIN MFG. CO.

G. B. GERMOND, *Attorney.*

COMPLAINANT'S EXHIBIT No. 9.

Russell & Erwin Mfg. Co., 45 and 47 Chambers street.

NEW YORK, *October* 27, 1882.

Covert Mfg. Co.

GENTS: You are doubtless aware that Sargent & Co. have
173 issued a revised list of covered snaps. Same is also noticed in the Iron Age. The prices are much less than yours. We ask what you are going to do about it?

RUSSELL & ERWIN MFG. CO.

G. B. GERMOND, *Attorney.*

The discount from list which we send by mail is 60 per cent. and 10 cash; 30 per cent. regular by small trade.

COMPLAINANT'S EXHIBIT No. 10.

Russell & Erwin Manufg. Co., 45 and 47 Chambers street,

NEW YORK, *October* 2, 1880.

Covert Manufg. Co.

GENTS: Referring to conversation had with Mr. Covert, a few days since, we have to say, that unless we are put in position to sell your snaps at fifty and ten per cent. we do not see how we can do anything with them. Sargent & Co. are out with their new price-

list, and show a full line of the same style of goods, and offer regularly at fifty and ten per cent. Please inform us what you will do with us in the matter to enable us to sell your goods as against S. & Co.

Yours, R. & E. MANUFG. CO.

G. B. GERMOND, *Attorney.*

COMPLAINANT'S EXHIBIT No. 11.

Burns & Degnan, 509 N. Main street.

ST. LOUIS, *January* 27, 1881.

Covert Manufg. Co., West Troy, N. Y.

GENTS: You will please send as soon as possible as we are entirely out

2 gross $\frac{3}{4}$ x c Covert snaps.
5 gross $\frac{7}{8}$ x c Covert snaps.
6 gross 1 x c Covert snaps.
3 gross $1\frac{1}{4}$ x c Covert snaps.
4 gross $1\frac{1}{2}$ x c Covert snaps.

Now gents, as the covered snap has been offered to us at a very low price would like you to give us your bottom price, and if you deliver to any house would like you to do the same with us, and give us your very best terms; also send us a new price-list on all your goods, and oblige.

BURNS & DEGNAN.
W. J. SHEA.

174 COMPLAINANT'S EXHIBIT No. 12.

18, '82.

GENTS: We don't want round eyes, they are for straps. One of the Ct. mfrs. was here, say they can make them, but I don't like to patronize infringers (I might say thieves).

Yours truly, NEWHALL & CO.

COMPLAINANT'S EXHIBIT No. 13.

Russell & Erwin Manufg. Co.

NEW YORK, *December* 30, 1887.

Covert Manufg. Co.:

Please quote your lowest price to us on the following goods, delivered here. Name discount for prompt cash; also advise how soon you could ship the goods if ordered by us.

Yours respectfully, RUSSELL & ERWIN MFG. CO.

G. B. GERMOND, *Attorney.*

Snaps, etc., etc.

We have difficulty in meeting price. S. & Co. sell their snap similar to your 500 line. We should like to see you in regard to the entire line. When will one of your firm be in town?

COMPLAINANT'S EXHIBIT No. 14.

LANCASTER, *March* 28, 1882.

Covert Manufg. Co.

GENTS: Sargent & Co.'s agent stopped to see me today, and without asking whether in want or not, offered me sixty and ten per cent. discount on snaps. I would just as soon pay fifty per cent. discount if such was the bottom price, and you will understand how pleasant it is for us to handle the goods.

I think you are entitled to sell the goods, and trust you will also protect me.

Yours truly, CHAS. J. RENGIER, JR.

COMPLAINANT'S EXHIBIT No. 15.

Vance & Kirby, 217 Market street.

CHATTANOOGA, TENN., *April* 13, 1882.

Covert Mfg. Co., West Troy, N. Y.

GENTS: We enclose d'sc't for forty-three and $\frac{12}{100}$ dollars in full inv. 15th March less 20 per cent. Send receipt.

Respect., VANCE & KIRBY.

$43.12.

Sargent & Co. offer this kind of snap at 60 and 10.

175 COMPLAINANT'S EXHIBIT No. 16.

Louis W. Towt, 56 Beekman St.

NEW YORK, *April* 15, 1882.

Messrs. Covert Mfg. Co.

GENTLEMEN: Enclosed please find check for ninety $\frac{23}{100}$ dollars, in full for account, for which, if correct, please send receipt.

Respectfully yours, LOUIS W. TOWT.

April 4		58 40
2 %		1 16
		57 24
Feb. 28	34 80	
Rebate	1 75	
		33 05
		90 29

Sargent & Co. are offering the snaps less than your price.

COMPLAINANT'S EXHIBIT No. 17.

J. C. Johnson & Co., 12 & 14 Pine St.

SAN FRANCISCO, CALA., *Jan'y* 6, 1882.

Covert Mfg. Co., Troy, N. Y.

DEAR SIRS: Can you give us any better terms than in the past, on say 100 gross snaps? There are some parties here selling a snap similar to yours at lower prices than we can sell yours at, and it interferes with our sales of your snaps. We would prefer selling your goods, but we are loosing our trade in that line on account of our prices being too high. If you can help us out please let us know.

Very truly yours, J. C. JOHNSON & CO.

COMPLAINANT'S EXHIBIT No. 18.

Geo. De B. Keim & Co., No. 162 & 164 North Third St.

PHILADELPHIA, *Jan'y* 21, 1881.

(Confidential.)

Covert Mfg. Co.

GENTS: Yours at hand. We have been offered recently a snap made similar to yours at considerable less than 50 & 10 per
176 cent. but we prefer to deal with you. We have not yet purchased any of the imitation, nor we do not wish, but we feel that you should protect us. No doubt our neighbors bought the other snap, as today we received several letters claiming a reduction on snaps (your make) sold by us and offered less by our neighbors, less than ours cost. Your reply will much oblige.

GEO. DE B. KEIM & CO.
HEILMAN.

COMPLAINANT'S EXHIBIT No. 19.

Geo. De B. Keim & Co., No. 162 & 164 North Third St.

PHILADELPHIA, *Nov.* 19, 1881.

Covert Mfg. Co.

GENTS: We were offered today a snap that we could sell in place of your make, and are offered at considerable less than your price, "price guaranteed," the party also wished to give us the sole control for Philada. Will you meet the price for us. We wish to sell your snaps all we can.

Yours, GEO. DE B. KEIM & CO.
HEILMAN.

COMPLAINANT'S EXHIBIT No. 20.

Geo. De B. Keim & Co., Nos. 162 and 164 North Third St.

PHILADELPHIA, *November* 26, 1881.

Covert Mfg. Co.

GENTS: In regard to the snaps offered us will you meet the price for us, or shall we buy the other make? If we do not buy, other parties will do so and undersell us. We would rather buy your snap. We feel that you should meet the market for us.

Yours, GEO. DE B. KEIM & CO.
HEILMAN.

COMPLAINANT'S EXHIBIT No. 21.

Rogers, Lewis & Co.

FORT WAYNE, IND., *March* 17, 1882.

Messrs. Covert Mfg. Co., Troy, N. Y.

GENTS: Yours of the 15th inst. just to hand. As regards the merit of the Victor we agree with you, but you know many goods are sold on their price and not their merit. As we yet know
177 of no one who is handling them, but the price as it was with the so-called covered will make them a sale. If we hear of any one will advise you.

Truly yours, ROGERS, LEWIS & CO.

Is not the Sargent snap an infringement on your snap?
R., L. & CO.

COMPLAINANT'S EXHIBIT No. 22.

Hamilton & Mathews.

ROCHESTER, N. Y., *February* 26, 1881.

Covert Mfg. Co.

GENTLEMEN: Please ship us at once, by the Merch. Desp.—
3 gr's harness snaps, ea. $\frac{7}{8}$ and 1 in.
1 " " " " $1\frac{1}{4}$, $1\frac{1}{2}$.

If at 50 and 15 per cent., or lower, provided you are selling for less. If you cannot furnish at this price we will buy Sargent & Co. snaps, as they will answer, we think.

We give you the preference at same price.

COMPLAINANT'S EXHIBIT No. 23.

Hamilton & Mathews, 27 Exchange street.

ROCHESTER, N. Y., *March* 3, 1881.

Covert Mfg. Co.

GENTLEMEN: In reply to yours of the 1st inst. would say that so far as liability is concerned, the risk we would run in selling Sar-

gent Co.'s snaps is not worth considering, as that concern is abundantly able to take care of any one who sells their goods, and we understand propose to do so, as far as this snap is concerned, for their agent assures us that they have a valid patent. You ought to be aware that dealers cannot be judges as to the rights of different m*f*g*r*s., in patented articles, and can only be guided, by buying from responsible parties who will guarantee to protect them against the claims of others, and who are able to pay for any damage they may cause others to suffer. If Sargent & Co. are infringing upon your patent, they are responsible, and you ought to see that they settle at once instead of allowing them to undersell you. We, however, do not care to make any change in our line of snaps, at present, for the difference in price, as we can probably get rid of what we have ordered without loss, so you may fill order sent you at same prices as last; but we still think you should either meet Sargent & Co.'s prices or stop his selling the goods as quickly as possible.

178 You wrote us several months ago that you intended to do this. You have only allowed us 1 per cent. cash. We are informed that you give others 2 per cent. cash. If so, we want the same disc't.

Yours truly, HAMILTON & MATHEWS.

COMPLAINANT'S EXHIBIT No. 24.

Hamilton & Mathews, 27 Exchange street.

ROCHESTER, N. Y., *March* 1, 1882.

The Covert Manufacturing Company.

GENTLEMEN: We have received your circular of reduced prices on loop harness snaps, and as we suppose you will protect us on unsold stock, we send you below a memorandum of what we now have on hand:

$3\frac{1}{6}$	gross	harness	snaps,	$\frac{7}{8}$	inch.
$3\frac{1}{6}$	"	"	"	1	"
$2\frac{1}{12}$	"	"	"	$1\frac{1}{4}$	"
$1\frac{10}{12}$	"	"	"	$1\frac{3}{8}$	"
$1\frac{7}{12}$	"	"	"	$1\frac{3}{4}$	"
$1\frac{10}{12}$	"	swivel	snaps.		
$2\frac{1}{12}$	"	round-eye	snaps,	$\frac{7}{8}$	inch.
$2\frac{5}{12}$	"	snaps and	thimbles.		

Send us a mem. of the credit you make us on these.

You do not say that you have made any decline in the three last articles, but we include them because we are informed by our traveller that Sargent & Co. are underselling you very considerably on snaps and thimbles for cattle ties which is similar to yours, and the result is that a great many of the dealers who formerly bought yours from us are now buying the Sargent & Co.'s snap and thimble. We wish you would put us in a position to compete with it. Please let us hear from you by return mail in regard to this.

Yours truly, HAMILTON & MATHEWS.

COMPLAINANT'S EXHIBIT No. 25.

P. Hayden, 50, 52, 54, & 56 Mechanic street.

NEWARK, N. J., 1, 19, 1881.

To Covert Mfg. Co.

DEAR SIRS: Please ship us, care Penn. R. R.—
12 gross cattle ties jute.
6 " halter " " new snap.

If you are thinking of making any reduction soon, give
179 us the benefit now. What are you doing about the covered snap? Are you suing Sargent, or have you no patent? Other parties will be making them soon. We have bo't none as yet, have been waiting for you to move in the matter and go bottom on price, or go for Sargent.

Yours, P. HAYDEN.
LANDSHACK.

COMPLAINANT'S EXHIBIT No. 26.

Hayden & Allen, 510, 512, & 514 N. Main street.

ST. LOUIS, *January* 19, 1881.

Covert Mfg. Co.

GENTLEMEN: Will want to place an order for your snaps for spring trade, and would be pleased to have you quote us your bottom prices, as we will be compelled to compete with the covered snap of Sargents, as they are being handled in this market and are offered at less money than yours. An early reply will oblige,

Yours truly, HAYDENS & ALLEN.
D. D.

COMPLAINANT'S EXHIBIT No. 27.

Rogers, Engle & Co., No. 22 North Main street.

DAYTON, O., *April* 8, 1881.

Covert Mfg. Co.

GENTLEMEN: Your letter to hand. We have sold some of Sargent's snaps (not largely, our principal sales is the German strap). Sargent claims he has a patent on his covered snaps, and that he does not infringe on yours. We buy them for less than you ask us for yours, and I have had to buy them to compete with other trade who buys the Sargent covered snap.

Yours truly, ROGERS, ENGLE & CO.

PHILADELPHIA, *April* 25, 1882.

Covert Mfg. Co.

GENTS: Please send 3 gross ⅝, 2 gross ¾, & 1, 2 gross ⅞ snaps. One-half rod-post hitcher, and oblige

Yours, WM. S. HANSELL & SONS.

Give us your best discount. We are offered the imitation snap as a low price, but do not care to buy of infringers.

180 NEW YORK *October* 5, 1880.

Covert Mfg. Co.:

Please send at once 10 dozen jute cattle ties, as last price guaranteed.

Please reply to our letter.

Mark packages R. & E. Mfg. Co., 25 Read street, also stock and package on invoice.

RUSSELL & ERWIN MFG. CO.
C. C. H.

Circuit Court of the United States for the Southern District of New York.

JAMES C. COVERT
ag'st
JOSEPH B. SARGENT and GEORGE H. SARGENT.

To the judges of the circuit court of the United States for the southern district of New York:

The court having decreed an infringement of the complainant's patent, and directed a reference to the undersigned as master to take and state an account of the gains, profits and advantages resulting to the defendants therefrom, and to assess the damages sustained by the complainant thereby, I do hereby report that I have been attended by counsel for the respective parties, to wit, Mr. William H. King for the complainant and Mr. John K. Beach for the defendants; that I have reduced to writing the proofs submitted by the respective parties and the same is certified and returned herewith.

The patent in question concerns a cattle-tieing device, consisting of a short tube or thimble which slips over a rope; and is secured at any point desired by means of a screw which passes through the wall or shell of the thimble into and between the strands of the rope. The screw is pointed at one end, and the other or outer end is fitted with an eye directly over the axial center of the body of the screw with which a snap secured to one end of the rope engages, and a loop of any desired size can thereby be formed. This patent was issued under date of April 6, 1875.

Two other devices seem to have been in the market to accomplish the same purpose. One a socket or thimble in two parts slightly curved, and when slipped over the rope were drawn together
181 by means of two screws and designed to engage the rope so tightly as to avoid slipping. On one side of this device was an eye for use in connection with a snap. This device was known as the Sargent-Hull socket.

The other device was a patent granted to John Wiard June 9, 1868, being in all essentials, save the form and construction of the screw, like complainant's thimble.

This screw was formed with two eyes at the outer end, and on opposite sides of the axial center the inner end, or the one coming in contact with the rope, was blunt, as contradistinguished from complainant's, and retained the thimble in place by forcible contact with the rope.

The Stanley Rule and Level Company, during the lifetime of this patent, which expired June 9, 1885, had a license to manufacture and sell the same granted by the patentee.

The complainant exercised his right under his patent by making and selling the thimbles, and by using them in conjunction with a rope and snap to make a complete cattle tie.

The infringement by the defendants consisted in selling thimbles and in selling cattle ties constructed with the infringing thimble, a rope and a snap. These articles, as sold by the defendants, were made by a corporation at New Haven, Connecticut, under the name of Sargent & Co.,' being the identical firm name under which the defendants carried on business in New York city.

The defendants seem to have been the sales agent without compensation of the New Haven corporation, but they were largely interested as stockholders of the corporation, and received compensation for their services and expenses in the form of dividends on their stock.

The competition between the defendants and the complainant was sharp and active, and the latter in order to meet it *were* forced to and did reduce the selling price of *their* product by enlarging the discounts.

Complainant's trade and customers were diverted from *them* by the lower prices of the defendants, and many letters were received showing a preference for the complainant's device, should *they* meet the lower price quoted by the defendants. In this respect the complainants *were* seriously damaged, and the profits from the sale and use of *their* device were very materially lessened by the conduct of the defendants. It was stipulated by the counsel for the defendants that the New Haven corporation made a net profit on the infringing thimbles of $1,500, and that defendants' share therein was $1,000.

From the foregoing facts I find as conclusions of law:

First. That complainants *are* entitled to recover of the defendants the sum of $1,000, being the profits derived by them by use of the patented device.

182 Second. That there is no reliable basis upon which to compute profits beyond the amount named in the preceding finding.

Third. That the complainants *have* been greatly damaged in *their* enjoyment of the monopoly granted, but that the evidence presents no definite basis upon which such damages can be assessed.

Fourth. That the facts do not warrant the presumption that if the defendants had not used complainant's device, that the complainants would have sold as many thimbles and cattle ties at the higher price charged by *them*, in addition to what *they* did sell as were sold and disposed of by the defendants.

All of which is respectfully submitted.

Dated New York, August —, 1888.

William H. King, Esq., complainant's solicitor.

SIR:. Please take notice that the foregoing is a copy of my draft report in the within-entitled action. I will hear counsel for the respective parties at my office on the 26th day of September, 1888, at 11 o'clock a. m., as to any objections that they may have to make to the same.

JOHN A. SHIELDS, *Master, etc.*

New York, August 18, 1888.

United States Circuit Court, Southern District of New York.

JAMES C. COVERT
ag'st
JOSEPH B. SARGENT and GEORGE H. SARGENT. } In Equity.

The complainant herein makes the following objections to the draft report of the master herein, bearing date August —, 1888:

First. That the master erred in stating "that the defendants seem to have been the sales agent without compensation of the New Haven corporation."

Second. To the statement contained in said report, that devices other than complainant's and defendants' were on the market to accomplish the same purpose, to wit: the "Sargent-Hull socket" and the "Wiard thimble."

Third. To the second conclusion of law, to wit: "That
183 there is no reliable basis upon which to compute profits beyond the amount named in the preceding finding."

Fourth. To the third conclusion of law, to wit, "That the complainant has been greatly damaged in his enjoyment of the monopoly granted, but that the evidence presents no definite basis upon which such damages can be assessed.

Fifth. To the fourth conclusion of law, to wit, "That the facts do not warrant the presumption that if the defendants had not used complainant's device that the complainant would have sold as many thimbles and cattle ties at the higher price charged by them, in addition to what they did sell, as were sold and disposed of by the defendants.

Dated September 26, 1888.

WM. H. KING,
Complainant's Solicitor.

United States Circuit Court, Southern District of New York.

JAMES C. COVERT
ag'st
JOSEPH B. SARGENT and GEORGE H. SARGENT. }

The defendants herein make the following objections to the draft report of the master herein, bearing date August —, 1888:

First. That the master erred in finding as a fact that complainant's trade and customers were diverted from him by the lower prices of the defendants.

Second. That the master erred in finding as a conclusion of law that the complainant was entitled to recover the total net profits of the defendants.

Dated October 2, 1888.

JOHN K. BEACH,
Solicitor for Defendants.

Circuit Court of the United States, Southern District of New York.

JAMES C. COVERT
ag'st
JOSEPH B. SARGENT and GEORGE H. SARGENT.

To the judges of the circuit court of the United States for the southern district of New York:

184 The court having decreed an infringement of the complainant's patent, and directed a reference to the undersigned as master to take and state an account of the gains, profits and advantages resulting to the defendants therefrom, and to assess the damages sustained by the complainants thereby, I do hereby report that I have been attended by counsel for the respective parties, to wit, Mr. William H. King for the complainant and Mr. John K. Beach for the defendants; that I have reduced to writing the proofs submitted by the respective parties, and the same is certified and returned herewith.

The patent in question concerns a cattle-tieing device consisting of a short tube or thimble which slips over a rope; and is secured at any point desired by means of a screw which passes through the wall or shell of the thimble into and between the strands of the rope. The screw is pointed at one end, and the other or outer end is fitted with an eye directly over the axial center of the body of the screw with which a snap secured to one end of the rope engages and a loop of any desired size can thereby be formed. This patent was issued under date of April 6, 1875.

Two other devices seem to have been in the market to accomplish the same purpose. One a socket or thimble in two parts slightly curved, and when slipped over the rope were drawn together by means of two screws and designed to engage the rope so tightly as to avoid slipping. On one side of this device was an eye for use in connection with a snap. This device was known as the Sargent-Hull socket.

The other device was a patent granted to John Wiard, June 9, 1868, being in all essentials, save the form and construction of the screw, like complainant's thimble.

This screw was formed with two eyes at the outer end, and on opposite sides of the axial center the inner end, or the one coming in contact with the rope, was blunt as contradistinguished from complainant's, and retained the thimble in place by forcible contact with the rope.

The Stanley Rule and Level Company during the lifetime of this

patent, which expired June 9, 1885, had a license to manufacture and sell the same granted by the patentee.

The complainant exercised his right under his patent by making and selling the thimbles, and by using them in conjunction with a rope and snap to make a complete cattle tie.

The infringement by the defendants consisted in selling thimbles and in selling cattle ties constructed with the infringing thimble, a rope and a snap. These articles as sold by the defendants were made by a corporation at New Haven, Connecticut, under the name of Sargent & Co., being the identical firm name under which
185 the defendants carried on business in New York city. The defendants seem to have been the sales agents without compensation of the New Haven corporation, but they were largely interested as stockholders of the corporation, and received compensation for their services and expenses in the form of dividends on their stock.

The competition between the defendants and the complainant was sharp and active, and the latter in order to meet it *were* forced to and did reduce the selling price of *their* product by enlarging the discounts. Complainant's trade and customers were diverted from *them* by the lower prices of the defendants, and many letters were received showing a preference for the complainant's device should *they* meet the lower prices quoted by the defendants.

In this respect the complainants *were* seriously damaged, and the profits from the sale and use of *their* device were very materially lessened by the conduct of the defendants. It was stipulated by the counsel for the defendants that the New Haven corporation made a net profit on the infringing thimbles of $1,500, and that the defendants' share therein was $1,000.

From the foregoing facts I find as conclusions of law:

First. That complainants *are* entitled to recover of the defendants the sum of $1,000, being the profits derived by them by use of the patented device.

Second. That there is no reliable basis upon which to compute profits beyond the amount named in the preceding finding.

Third. That the complainants *have* been greatly damaged in *their* enjoyment of the monopoly granted, but that the evidence presents no definite basis upon which such damages can be assessed.

Fourth. That the facts do not warrant the presumption that if the defendants had not used complainant's device that the complainants would have sold as many thimbles and cattle ties at the higher price charged by *them*, in addition to what they did sell, as were sold and disposed of by the defendants.

All of which is respectfully submitted.

Dated New York, August —, 1888.

Counsel for the parties in interest filed objections hereto annexed to my draft report, which objections, upon careful consideration, I overrule; and sign the foregoing as my final report.

JOHN A. SHIELDS, *Master*.

New York, Oct. 25, 1888.

186 Circuit Court of the United States, Southern District of New York.

JAMES C. COVERT
ag'st
JOSEPH B. SARGENT and GEORGE H. SARGENT. } In Equity.

The complainant herein takes the following exceptions to the final report of the master herein, bearing date Oct. 25, 1888:

First. That the master erred in stating "that the defendants seem to have been the sales agent without compensation of the New Haven corporation."

Second. To the statement contained in said report, that devices other than complainant's and defendants' were on the market to accomplish the same purpose, to wit, the "Sargent-Hull socket" and the "Wiard thimble."

Third. To the second conclusion of law, to wit: "That there is no reliable basis upon which to compute profits beyond the amount named in the preceding finding."

Fourth. To the third conclusion of law, to wit: "That the complainant has been greatly damaged in his enjoyment of the monopoly granted, but that the evidence presents no definite basis upon which such damages can be assessed.

Fifth. To the fourth conclusion of law, to wit: "That the facts do not warrant the presumption that if the defendants had not used complainant's device, that the complainant would have sold as many thimbles and cattle ties at the higher price charged by them, in addition to what they did sell as were sold and disposed of by the defendants."

Sixth. That the said master erred in not awarding to said complainant a larger sum than $1,000.

Dated November 15, 1888.

WM. H. KING,
Complainant's Solicitor.

187 Circuit Court of the United States, Southern District of New York.

JAMES C. COVERT
ag'st
JOSEPH B. SARGENT *et al.* } In Equity.

Defendants' Exception to Master's Report.

Defendants' exception to the report herein filed October 25, 1888, made by John A. Shields, Esq., master in chancery, to whom this cause was referred by decretal order of this court, made and entered March 27, 1887.

First. For that the master found that the complainant's trade and customers were diverted from him by the lower prices of the defendants, when the master should have found that there was no

evidence that the defendants' prices for rope thimbles and cattle ties were lower than the complainant's prices for the same article.

Second. For that the master erred in finding, as a matter of law, that the complainant was entitled to recover the total stipulated profits of the defendants, when the master should have found that there was no evidence to show that the whole, or any part of said profits were due to the characteristic features of the patented rope thimbles.

JOHN K. BEACH,
Solicitor for Defendants.

188 United States Circuit Court, Southern District of New York.

COVERT)
vs.
SARGENT *et al.*)

WALLACE, *J.*:

The exceptions in this case challenge the correctness of the master's report both as to the profits and damages which the complainant should recover for the infringement of his patent.

Where, as in the present case, a patentee elects to enjoy his monopoly under a patent by manufacturing and selling the patented device without granting licenses and another invades his right by making and selling it in competition with him, the measure of damages for the wrong is the profits which the patentee has lost in consequence of the unauthorized sales made by his competitor. The difference between the cost price to the patentee and the price he could have realized except for the interference of the infringer represents the profit lost on each sale, but in order to establish the amount of his loss he must show by satisfactory evidence to what extent the competition of the infringer has diverted sales which he otherwise would have made himself. This case seems to have been presented to the master upon the theory that the complainant was entitled to recover against the defend-
189 ants the profits he would have made if he had sold all the infringing devices which were sold by the defendant. The cases are very rare and exceptional in which it can be presumed, without evidence directly to the point, that the patentee would have sold all the devices which were sold by the infringer. Frequently competition stimulates the demand in the market for a given article, and the zeal and energy of competing dealers is an element which cannot be ignored. The patentee is not required to show by direct evidence that he would have made all or some part of the sales which were made by his competitor, and indeed, generally, it would be impossible to do so, but he must prove facts and circumstances which legitimately create the presumption that he would have made the sales himself had it not been for the sales of the infringer.

In the present case it is impossible to determine from the testimony which has been introduced how many thimbles the complainant would have sold if the defendants, instead of selling the

thimbles of the patent, had confined themselves to selling the other fastening devices which they were at liberty to sell and which were being sold by others. The patented articles are not so superior to the other fastening devices as to give rise to any cogent presumption that those who purchased them of the defendants would have bought them of the complainant in preference to the other devices and without reference to the difference in price, if they could
190 not have bought them elsewhere. Evidence, however, was given that customers of the complainant stopped buying the patented devices of him after the defendants offered them at a reduced price and then became and continued customers of the defendants. This testimony authorized the presumption that the complainant lost the sales made by the defendants to these purchasers, but here again the complainant failed to show the amount of his loss. He did not prove how many thimbles the defendants sold. The statement of sales furnished by the defendants do not give the number or any data from which the number can be computed. The statements give the name and dates of sales and the sums in gross charged or received, but the sums represent charges or receipts for other articles sold with the thimbles, and do not give any information which enabled the master to ascertain what part is for thimbles or the number of thimbles sold. The master could not have made any different findings with respect to damages, and the exceptions to these findings must be overruled.

The only evidence before the master to show that the defendants made any profits by the sale of the patented thimbles is their own admission in the form of a stipulation. The evidence was that they were the selling agents at the city of New York of a Connecticut corporation by which the thimbles were manufactured and sold the thimbles, as well as other articles manufactured by the Connecticut corporation, without commission.
191 The stipulation is that one of the defendants received $750 and the other the sum of $250 from the Connecticut corporation, which sum represented their respective interests as members of that corporation in the profits made by the corporation from the manufacture and sale of the thimbles. There is no merit in the exceptions filed by either party to the findings of the master in respect to profits. The decree, however, will charge each defendant with the profits which he severally derived instead of charging both jointly for $1,000.

Endorsed: United States circuit court, southern district of New York. Covert *vs.* Sargent *et al.* Opinion, Wallace, J. U. S. circuit court. Filed Mar. 20, 1889. John A. Shields, clerk.

192 [Endorsed:] Circuit court of the United States for the southern district of New York. Covert *vs.* Sargent *et al.* (Copy.) Opinion, Wallace, J. Original, filed Mar. 20, 1889.

193 At a stated term of the circuit court of the United States of America for the southern district of New York, in the

second circuit, held at the city of New York on the twelfth day of June, 1890.

Present: Hon. Wm. J. Wallace, judge.

JAMES C. COVERT
against
JOSEPH B. SARGENT and GEORGE H. SARGENT. } In Equity. No. 2.

This cause having been heretofore brought to a hearing upon the report of John A. Shields, Esq., master of this court, to whom it was referred to ascertain and report the number of "clasps or thimbles for hitching devices" embracing the principle of the complainant's invention as described and claimed in his patent, as mentioned and set forth in the bill of complaint in this cause, and also the number sold by the said defendants or either of them since the date
194 of said patent and the damages the complainant had sustained and advantages which had been realized by the defendants by reason of the infringement of such patent since the date last aforesaid, which report bears date October —, 1888, and also upon exceptions taken to the said report upon the part of both the said complainant and of said defendants, and the cause having been argued by William H. King, counsel for the said complainant, and by John K. Beach, counsel for the defendants, and due deliberation had thereon—

It is ordered, adjudged, and decreed, and this court doth hereby order, adjudge, and decree, that the said patent of said complainant is a good and valid patent, and that said defendants and each of them have infringed the same and the rights of said complainant thereunder.

It is further ordered, adjudged, and decreed, and this court doth hereby order, adjudge, and decree, that the said defendant, Joseph B. Sargent, pay to the said complainant the sum of seven
195 hundred and fifty dollars ($750), and the said defendant, George H. Sargent, pay to the said complainant the sum of two hundred and fifty dollars ($250), being the amount adjudged to be due said complainant in and by said report of said master.

And it is further ordered, adjudged, and decreed that the said defendants pay to the said complainant his costs in this suit, taxed by the clerk of said court at four hundred and sixty-eight dollars, making a total of fourteen hundred and sixty-eight dollars, and that said complainant have execution therefor against the property of said defendants, and that the injunction heretofore granted in said cause be continued and made perpetual.

WM. J. WALLACE.

(Endorsed:) Circuit court U. S., south. dist. N. Y., No. 2.
196 James C. Covert *vs.* Joseph B. Sargent & ano'r. Final decree. Approved as to form. Wm. H. King, compl't's sol'r. John K. Beach, def't's solicitor. U. S. circuit court. Filed June 11, 1890. John A. Shields, clerk.

196*a* Circuit Court of the United States, Southern District of New York.

JAMES C. COVERT
vs. } In Equity.
JOSEPH B. SARGENT & *al.*

It is hereby stipulated that the foregoing may constitute the record to be sent by the clerk of this court to the Supreme Court of the United States on the appeal to said Supreme Court in the above-entitled cause, without prejudice to any motion hereafter to be made to correct the same.

It is further stipulated that the model exhibits in the cause may be retained in the possession of the clerk of this court until said hearing on appeal.

New York, October 9th, 1890.

(Signed) WM. H. KING,
Sol'r & Counsel for Appellee.

(Signed) JOHN K. BEACH,
Sol'r for Appellant.

(Endorsed:) U. S. circuit court. Filed Oct. 11, 1890. John A. Shields, clerk.

197 Circuit Court of the United States, Southern District of New York. In Equity.

JAMES C. COVERT
vs. }
JOSEPH B. SARGENT & GEORGE H. SARGENT.

The above-named defendants, conceiving themselves aggrieved with the final decree entered on the eleventh day of June, 1890, do hereby appeal therefrom to the Supreme Court of the United States, and they pray that their appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the Supreme Court.

JOHN K. BEACH,
Solicitor for Defendants.

Appeal allowed June 26, 1890.

E. HENRY LACOMBE.

198 Endorsed: United States circuit court, S. district of New York. James C. Covert *vs.* Joseph B. Sargent and George H. Sargent. 2d action. Petition of appeal and allowance thereof. John K. Beach, def'ts' solicitor. To W. H. King, Esq., complainant's solicitor. Due service of a copy of the within petition & allowance is hereby admitted. Dated Albany, N. Y., June 28, '90. W. H. King, comp't's solicitor. U. S. circuit court. Filed July 1st, 1890. John A. Shields, clerk.

199 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

JAMES C. COVERT
vs.
JOSEPH B. SARGENT & GEORGE H. SARGENT. } Bond for Damages and Costs.

2d action.

Know all men by these presents that we, Joseph B. Sargent, of New Haven, Conn., and George H. Sargent, of New York city, as principals, and Thomas J. Atkins and George Munson, of Brooklyn, New York, as sureties, are held and firmly bound unto the above-named James C. Covert in the sum of three thousand dollars, to be paid to the said James C. Covert; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the seventeenth day of June, in the year of our Lord one thousand eight hundred and ninety.

Whereas the above-named defendants have prosecuted their appeal to the Supreme Court of the United States to reverse the judgment and decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named defendants shall prosecute their said appeal to effect and answer all damages and costs if they shall fail to make the same good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOSEPH B. SARGENT,
By HENRY B. SARGENT, *Att'y.* [L. S.]
GEORGE H. SARGENT. [L. S.]
THOMAS J. ATKINS. [L. S.]
GEO. MUNSON. [L. S.]

Sealed and delivered and taken and acknowledged this 17th day of June, 1890, before me, by Henry B. Sargent, attorney for Joseph B. Sargent.

FRANCIS G. BEACH,
Notary Public.

Sealed and delivered and taken and acknowledged by the said George H. Sargent and Thomas J. Atkins and George Munson this 18 day of June, 1890, before me—

E. JACKSON,
Notary Public, N. Y. Co.

200 [Endorsed:] U. S. circuit court, southern district of New York. James C. Covert *vs.* Joseph B. Sargent and George H. Sargent. 2 action. Bond for costs and damages on appeal. John K. Beach, def'ts' sol'r. Due service of a copy of the within bond is hereby admitted and approved as to form, amount, and

sufficiency of sureties. Dated June 20, 1890. W. H. King, comp't's sol'r. Approved as to form, amount, and sufficiency of the sureties. N. Y., June 26, 1890. E. Henry Lacombe. U. S. circuit court. Filed June 26, 1890. John A. Shields, clerk.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

The said Thomas J. Atkins and George Munson, being duly sworn, depose and say that they are householders and freeholders in the State and district above named, and that each individually is worth the sum of three thousand dollars above all his just debts and liabilities.

THOMAS J. ATKINS.
GEO. MUNSON.

Sworn to this 18th day of June, A. D. 1890, before me—
E. JACKSON,
Notary Public, N. Y. Co.

201 By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York.

UNITED STATES OF AMERICA, }
S. District of New York. }

Whereas Joseph B. Sargent and George H. Sargent have appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York made in favor of you, the said James C. Covert: Therefore you are hereby cited to appear before the said Supreme Court, at a term thereof to be holden at Washington on the second Monday of October, 1890, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern District of New York, in the second circuit, on the 26th day of June, 1890.

202 E. HENRY LACOMBE.

(Endorsed:) United States Supreme Court. James C. Covert *vs.* Joseph B. Sargent and George H. Sargent. 2d action. Citation. John K. Beach, defendants' solicitor. To W. H. King, Esq., complainant's solicitor. Due service of a copy of the within citation is hereby admitted. Dated Albany, N. Y., June 28, '90. Wm. H. King, solicitor. U. S. circuit court. Filed Jul- 1, 1890. John A. Shields, clerk.

203 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second

circuit, do hereby certify that the foregoing pages, numbered from one (1) to two hundred and two (202), inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of James C. Covert, complainant & appellee, against Joseph B. Sargent and George H. Sargent, defendants & appellants, as the same remain of record and on file in said office.

Seal of U. S. Circuit Court, South. Dist. New York.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this sixteenth day of October, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the said United States the one hundred and fifteenth.

JOHN A. SHIELDS, *Clerk.*

Endorsed on cover: Case No. 14,342. S. New York C. C. U. S. No. 298. Joseph B. Sargent and George H. Sargent, appellants, *vs.* James C. Covert. Filed October 18, 1890.

Unite Supreme Court U. S.
FILED.
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JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 298.

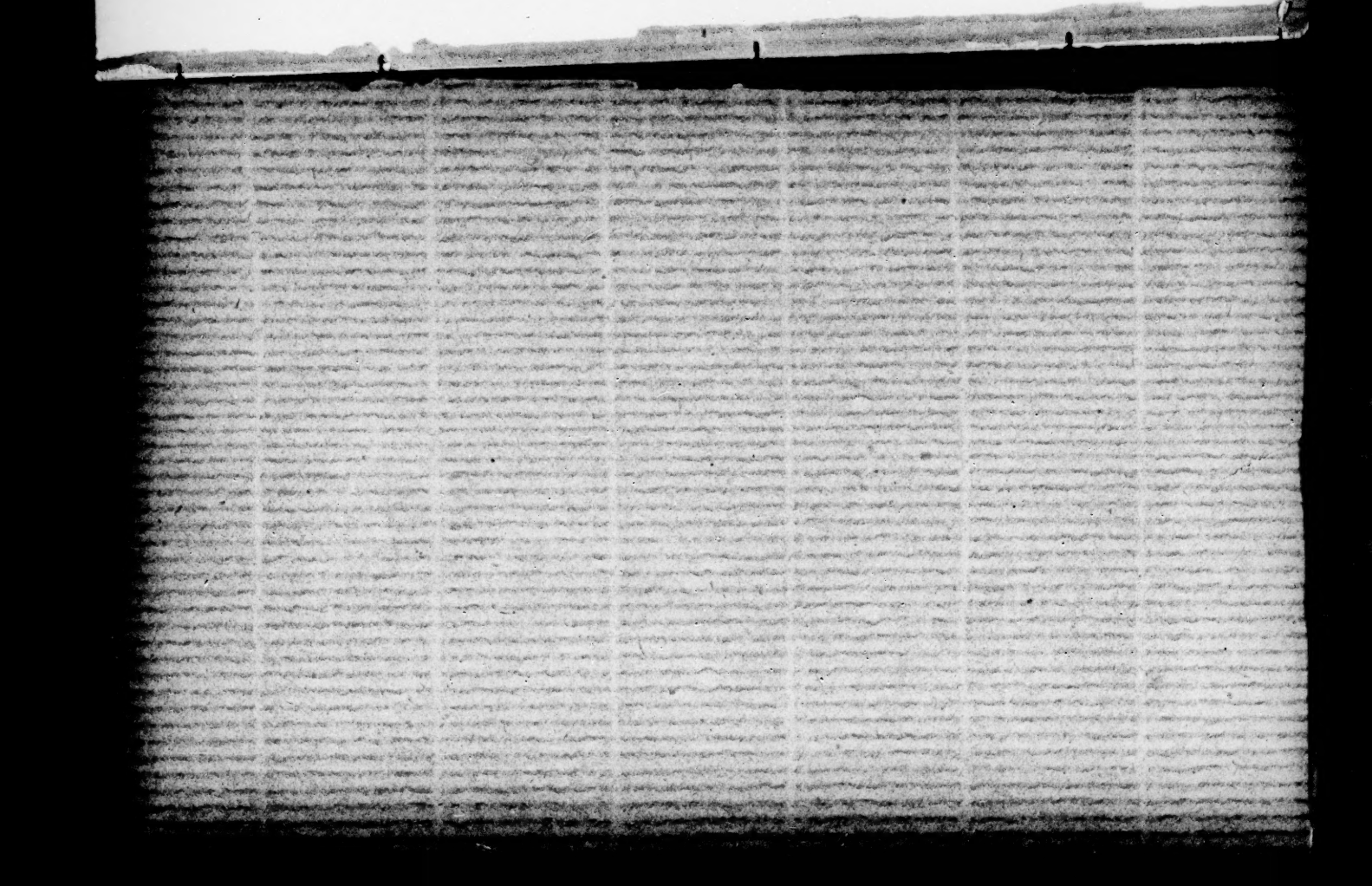
JOSEPH B. SARGENT AND GEORGE H. SARGENT,
Appellants,

vs.

JAMES C. COVERT.

BRIEF FOR APPELLANTS.

JOHN KIMBERLY BEACH,
of Counsel.



Tuttle, Morehouse & Taylor, Printers, New Haven, Conn.

Supreme Court of the United States.

OCTOBER TERM, 1893.

JOSEPH B. SARGENT AND GEORGE H. SARGENT,
Appellants,

vs.

JAMES C. COVERT,
Appellee.

BRIEF FOR APPELLANTS.

STATEMENT.

This is an appeal from a final decree of the United States Circuit Court for the Southern District of New York, by which it was adjudged that letters patent No. 161,757, dated April 6, 1875, issued to James C. Covert, for improvement in clasps or thimbles for hitching devices, was a good and valid patent; that the defendants and appellants had infringed the same; and that the plaintiff and appellee should recover the sum to one thousand dollars as the defendants' profits.

Record, p. 124.

The case was argued in the court before his Honor, Judge Wallace, who decided the case orally, in favor of the complainant, and referred the cause to John A. Shields, Esquire, Master. No opinion upon the merits of the patent, therefore, will be found in the record; the only opinion of the court being that at p. 122 of the record, overruling the exceptions to the Master's report.

REASONS OF APPEAL.

1. That the court erred in holding said letters patent to be valid.

2. That the court erred in holding that the defendants infringed the same.

3. That the court erred in overruling the following exception to the report of the Master, viz:

> "Second. For that the Master erred in finding, as matter of law, that the complainant was entitled to recover the total stipulated profits of the defendants; whereas the Master should have found that there was no evidence to show that the whole or any part of said profits were due to the characteristic features of the patented rope thimble."

THE PATENT IN SUIT.

The patent in suit, which is printed at p. 40 of the record, relates to a device used upon cheap rope halters; and it consists of a short tube through which the rope passes, having a set screw entering through the walls of the tube so as to impinge upon the rope and hold the tube fast in any given position on the rope. This set screw is provided with an eye, into which it is intended that a snap hook on the end of the rope should be hitched, so as to form a loop in the rope, which passes around the neck of the animal; the size of the loop being determined by the position of the thimble on the rope.

The claim of the patent is,

"The combination of the tube *A* having the projection *a*, with interior screw threads cast therewith, and the screw *C*

having the eye *D* and the sharp point *x* for entering into the rope, all constructed as and for the purposes set forth."

The defenses set up by the answer were, invalidity of the patent and non-infringement.

THE PATENT IS INVALID.

Upon reference to p. 70 of the record, it will appear that substantially the same rope thimble as that described and shown in the patent in suit was old, and is shown in the patent to Wiard for improvement in cattle tie, dated June 9, 1868.

Figure 2 of the drawing opposite p. 70 of the record, when taken in connection with Figure 1, clearly shows a short tube through which the rope was intended to pass, and a set screw entering through the walls of the tube and adapted to engage with the rope so as to fasten the thimble in any desired position. This apparatus is described as follows in the patent, being called a "socket." And the terms "thimble" and "socket" are used in the record and on this brief interchangeably.

> "*B* is a socket, constructed so as to pass freely over the rope as in Figure 1, and in one side of which is fitted a thumb screw *C*, so that when the thumb screw is turned away down upon the rope the socket will be held firmly in that position, and may be adjusted to different positions on the rope by loosening the screw, and sliding the socket accordingly."
>
> Record, p. 70.

Upon a comparison of Figure 2 of the patent in suit with Figure 2 of the Wiard patent, it is plain that the two things are alike, save that the end of the set screw in the patent in

suit is sharpened and has but one eye, whereas the end of the set screw in the Wiard patent is blunt and is provided with two eyes.

There was also evidence showing that rope sockets had been manufactured and sold under the Wiard patent to a very considerable extent, to wit: to the extent of more than 125,000 between 1868 and 1886.

Record, p. 45.

The complainant admitted that prior to the alleged invention of his patented rope thimble he knew of the presence of the Wiard socket in the market, and was familiar with the device.

Record, p. 29.

The complainant also produced, as a sample of the Wiard socket with which he had been familiar prior to his alleged invention, a specimen, marked in the case Complainant's Exhibit H; from which it appears that, as those sockets were actually made and sold in the market, the screw was more or less reduced in size at its end and somewhat rounded upon the point.

The complainant testifies (pp. 29 and 30), that complaints and objections were made to the Wiard socket, and that he was led to undertake the production of the patented rope thimble because of those complaints.

As to the measure of the improvement which the complainant made upon the Wiard thimble, the expert witness for the complainant testified as follows:

> "X. Q. 42. That is to say, you think, if anybody would take the Wiard socket, Complainant's Exhibit H, and sharpen the end of the screw so as to make it

substantially like the sharpened point *x*, of the Covert patent, they would thereby infringe the Covert patent in suit?

(Objected to by complainant's counsel, as immaterial, irrelevant and hypothetical.)

A. In my opinion it would be an infringement."

What the complainant did, therefore, in answer to the objections which he claims were urged against the Wiard socket, was simply to sharpen the point of the screw.

The advantage of sharpening the point of the screw is thus stated by complainant's expert:

"Q. 12. What, if any, advantages are there in the use of a pointed screw over that of a flat ended screw, in thimbles for hitching devices, when such thimbles have been placed upon hitching devices?

A. A sharp pointed screw will enter the material of which the rope is composed, and hold the thimble in a positive manner, and this is true even if the screw becomes slightly slackened; a flat ended screw simply holds by frictional contact, and if the screw is slightly slackened does not prevent the thimble from being slipped out of place."

By way of clinching the fact that the only material difference between the patented thimble and the Wiard thimble was in the sharpening of the point, a thimble was prepared from one which was found to be an infringement of the patent, and which had a sharpened point. This point was filed away until the end of the screw was rounded to substantially

the same shape as the end of the screw in the Wiard socket, Exhibit H; and the complainant's expert was then asked this question:

> "X. Q. 43. And I suppose it is equally true that the thimble which I now show you, and which is like those sold by the defendants, except that the point of the screw is rounded like complainant's Exhibit H instead of being comparatively sharp, is not within the claim of the patent, is it?
>
> (Same objections by defendants' counsel.)
>
> A. In my opinion, the device last shown me is not within the scope of the claim."

(The thimble last shown witness was marked by the examiner, for identification, with the title of the cause and the words, "Defendants' thimble round pointed screw," and the initials of the examiner.)

These two exhibits, therefore, namely: the "Wiard sharpened screw," which the complainant's expert has declared to exhibit the invention claimed, and the "defendants' thimble round pointed screw," which the same witness has declared does not exhibit the invention claimed, illustrate and emphasize the proposition that the sole ground upon which the alleged invention can be distinguished from the prior art is, that the point of the set screw in the old rope thimble has been sharpened by the patentee for the same purpose for which mechanics have sharpened instruments of every description from time immemorial, namely, to enable it to penetrate more readily into the material against which it was forced.

The whole case on the validity of the patent turns therefore, on the question whether in the year 1875 the trained intelli-

gence of a mechanic could furnish the suggestion that a sharp point would penetrate the rope better than a blunt point.

But we deny that there was any such distinction between the Wiard screw and the patented screw as that the former was "flat ended" and the latter sharp.

The Wiard socket as sold in the market, and as known to the complainant prior to his alleged inventions, had a rounded teat on the end of the screw of smaller diameter than its threaded portion.

See complainant's Exhibit H.

Neither is there any such actual difference in operation between the two, as is suggested by complainant's expert; to wit, that "a flat ended screw simply holds by frictional contact."

Personal experiment will verify the reasonable statement, that in any event the end of the screw imbeds itself in the rope. No other result could follow, since the rope is soft and compressible, and the screw is hard and incompressible. The evidence also, is specific that on the particular exhibit Stanley Rule and Level Company Cattle Tie, (which is a sample of cattle tie made prior to 1875 and having a Wiard socket on it, Rec., p. 41) the end of the Wiard screw penetrates the rope, when screwed down hard, to a distance of almost half its diameter; to wit, $\frac{4}{16}$ of an inch: the rope being $\frac{9}{8}$ of an inch in diameter.

Rec., p. 62, Int. 11.

The witness also testified that the actual mode of operation of the Wiard socket in the exhibit last referred to was the same as the mode of operation of the patented thimble, with respect to the engagement between the rope and the thimble.

Rec., p. 62, Int. 12.

On the other hand the expert witness for the complainant did not compare the *actual* mode of operation of the Wiard socket as made and sold prior to the alleged invention, with the patented thimble; but testified only with reference to an alleged *theory* of the mode of operation of a "flat ended" screw; and since the anticipatory Wiard socket did not have a "flat ended" screw, but was more or less pointed, the evidence would be wide of the mark, even if it were theoretically correct—which we deny.

Rec., p. 10, Int. 12.

The complainant's expert also admitted that in the alleged infringing exhibits—"the extreme point of the conical end of the screw is very slightly rounded, and in my opinion this change in construction does not take the devices in question out of the scope of the claim of the covert patent in suit."

Rec., p. 13.

In other words the whole matter is one of degree, and not of function. The rounded teat on the Wiard screw has no other function than to penetrate the rope, and also compresses it within the tube of the thimble. The "slightly rounded" end of the defendant's screw penetrates the rope a little further, but also compresses it within the tube.

The "sharp point 'x'" of the patented screw penetrates the rope still further and also compresses the rope within the thimble, as the complainant's expert admits.

Rec., p. 10, Int. 9.

There is no evidence tending to relieve the patent of its apparent lack of invention. Even the complainant's expert dodged this point, and although directly asked whether "in your opinion there is any invention in the thimble as shown"; he discreetly confined his answer to the proposition that "In my opinion, in view of the devices referred to, there is *novelty* in the device covered by the covert patent."

Rec., p. 16, Int. 34.

It was indeed impossible for the witness to enter on the issue of invention with any grace; for when it is once fully understood that the only difference regarded as crucial, between the prior Wiard thimble and the alleged invention, lies in the circumstance that the former has a screw with a rounded point and the latter a screw with a sharpened point; and when it is also understood that the only alleged difference of operation is that the sharpened point will "enter the material of which the rope is composed," further than the rounded point; then nothing remains to be said, except that from time immemorial the human mind has recognized the propriety of sharpening a point whenever facility of penetration was desired.

A labored attempt was made on the *prima facie* case, to establish the proposition that the Wiard thimble was an imperfect, if not a dangerous, thing. But all of this is hypothetical and conjectural. The expert witness for the complainant was the chief reliance of the complainant on this point, but there is no evidence that he ever used a Wiard thimble, and there is no evidence coming from the mouth of anybody who ever used a Wiard thimble, that such thimbles were in any way defective. The evidence of Hull, p. 19, is also purely speculative. So far as appears, he never saw a Wiard thimble until the same was handed to him for his criticism. On the other hand, the witness Turner (p. 21), who had dealt in the Wiard thimble, was not asked to say that it was imperfect, but simply said that the complainants' thimble was regarded as better and more practical. James Byrne (p. 23) goes the farthest of any witness, saying that he has heard from customers and users of horse and cattle ties, and the trade generally, that the Wiard thimbles "would slip on account of the end of the screw being blunt." Frederick Leeds (p. 25) confined himself to the proposition that there is no sale for the Wiard thimble, without stating whether that was due to the price or to something else.

All of this testimony was taken before the defendants had proved the extent to which the Wiard thimble had been sold, to wit, to the extent of over 125,000 thimbles. After this fact was disclosed on the record, it naturally outweighed the opinions of the witnesses last referred to; and from that time nobody was heard to say on the record that the Wiard thimble was not a thoroughly practical and commercially successful article. And no evidence, either of experiment or of fact, was introduced to show that the alleged tendency to slip had been or could be demonstrated.

Upon this question whether there is any benefit in having the end of the screw sharpened as distinguished from round or oval, there is no proof of any marked superiority of one screw over another; and the conclusion to which any one must come who reads the evidence and examines the exhibits is that stated by Judge Wallace, in his opinion overruling the exceptions to the Master's report, to wit:

> "The patented articles are not so superior to the other fastening devices as to give rise to any cogent presumption that those who purchased them of the defendants would have bought them of the complainant in preference to the other device and without reference to the difference in price, if they could not have bought them elsewhere."
>
> Record, p. 123.

It also appeared on the accounting that the defendants, who had been making round pointed screws for some time (Rec., p. 49), sold their sharp and round pointed screws indifferently (Rec., p. 77, cut 21), and that after the injunction and after the sharp pointed screw had been modified to a round pointed screw, their sales increased (Rec., p. 106).

DEFENDANTS DO NOT INFRINGE.

We restate the claim for the purpose of calling attention to the italicized clause: "The combination of the tube *A* having the projection *a*, *with interior screw threads cast therewith*, and the screw *C* having the eye *D* and the sharp point *x* for entering into the rope, all constructed as and for the purposes set forth."

It is impossible to give effect to the language of the italicized clause, without reading the claim so as to restrict it to the thimble having interior screw threads cast therewith. No other meaning seems to be possible.

It appears on the record, p. 61, that the claim originally read as follows: "The combination of the thimble *A*, rope *B*, and sharp pointed screw *C* provided with the eye *D* substantially as and for the purpose herein set forth;" and that the words, "having the projection *a*, with interior screw threads cast therewith" were inserted subsequently by amendment.

The proof is, that the defendants' screw threads are made with a tap, in the ordinary way.

Record, p. 50.

THE COURT ERRED IN OVERRULING THE DEFENDANTS' EXCEPTION TO THE MASTER'S REPORT.

The foundation for the judgment awading the sum of one thousand dollars to the complainant, as defendants' profits, is the following stipulation, on p. 82 of the record:

> "It is stipulated by counsel for the respective parties, for the purpose of avoiding the expense and delay which a thorough examination of the books

require, that Sargent & Company of New Haven made a net profit from the manufacture and sale of the infringing thimbles, of fifteen hundred dollars; that the defendants, as stockholders in said corporation, have derived jointly a profit of one thousand dollars from such manufacture and sale, to wit: that Joseph B. Sargent has derived a profit of seven hundred and fifty dollars, and that George H. Sargent has derived a profit of two hundred and fifty dollars."

The defendants, after and for some time prior to the injunction, had been making and selling thimbles in which the screw had a round point, and which were not claimed to infringe the patent in suit.

Record, p. 49, Int. 8 and 9.
p. 51, Int. 31.

These thimbles, it was claimed and admitted, were open to be made and sold by the defendants and produced the same result, and the defendants claimed that only so much of the net profits derived from the sale of the infringing thimble should go to the patentee, as was due to the difference between the use of the sharp pointed and the use of the round pointed screw; and that the burden of proof was on the complainant to show that there was a difference in favor of the sharp pointed screw, and to show how much that difference was. But the Master overruled this claim, and awarded the total net profits of the defendants to the complainant; to which the defendants duly excepted in the following language:

"For that the Master erred in finding, as a matter of law, that the complainant was entitled to recover the total stipulated profits of the defendants; whereas

> the Master should have found that there was no evidence to show that the whole or any part of said profits were due to the characteristic feature of the patented rope thimble."

The court overruled this exception, and in so doing we submit that the court erred.

Garrettson vs. Clark, 111 U. S. 120.

The decree should be reversed, and the cause remanded to the Circuit Court with directions to dismiss the bill.

JOHN KIMBERLY BEACH,
Of Counsel.

MAR 16
JAMES H. McKEN

Supreme Court of the United States.

OCTOBER TERM, 1893.

JOSEPH B. AND GEORGE H. SARGENT,
Appellants,
vs.
JAMES C. COVERT.

CASE No. 14,343.
TERM No. 298

BRIEF FOR APPELLEE.

H. A. TOULMIN,
For Appellee.

Supreme Court of the United States.

OCTOBER TERM, 1893.

JOSEPH B. AND GEORGE H. SARGENT, *Appellants.*

VS.

JAMES C. COVERT.

Term No. 298.

Case No. 14,343.

Brief and Argument for Appellee.

Statement of the Case.

The appellee is a manufacturer of harness and saddlery hardware. The appellants are stockholders of a manufacturing corporation in New Haven, Conn., where the infringing goods were made, but do business in the name of Sargent & Co., in New York City, where they were sued by appellee, in the Circuit Court for the Southern District of New York. His Honor, Judge Wallace, entered a decree sustaining the patent and the charge of infringement, enjoined the appellants and awarded an accounting. The Master's report awarded $1,000 as the profits made by the appellants. Exceptions were filed by both parties, but the Court overruled all the exceptions and sustained the Master's

findings, in view of the state of the proofs adduced before the Master. The appellants stipulated that their profits amounted to $1,000 on the sales of the infringing articles (Rec. 82). The interlocutory decree was then made final, or rather a final decree was entered. (Rec. 124). From this decree appellants have appealed.

The patent sued on was issued to and is owned by appellee, Mr. James C. Covert. It is dated April 6th, 1875, numbered 161,757, and is entitled Improvements in Clasps or Thimbles for Hitching Devices. The claim reads:

> "The combination of the tube A, having the projection a, with interior screw-threads cast therewith, and the screw C, having the eye D and point x *for entering into the rope*, all constructed as and for the purpose set forth."

The specification says:

> "The thimble A is fastened on the rope B at any desired place by means of a sharp pointed screw, C and x, which *passes through the thimble at the nut a and the rope* * * * It, (the device) is light and neat, and with it *there is no danger of the rope working loose, and shoving up around the* (animal's) *neck, as is often the case with other devices of this character*."

The record shows that this invention went immediately into public use, and was taken up by the trade at once and acquired and maintained a wide-spread reputation for its practicability, and its safety to animals, as its principle of construction and manner of application to the rope prevented the possibility of injuring or choking animals by the slipping of the device on the rope. It solved a problem that had theretofore existed in this important branch of manufacture. It fulfilled a long-felt want, and the production of it by Mr. Covert, was at the request of the trade among whom he traveled in selling his other

articles. The record shows that he was requested by "Customers to get up something that would overcome the objections to" the ties then on the market, and that "he spent a large amount of time, money and thought in experimenting to get up such a device as would overcome all difficulties, and finally, after a great deal of thought, and testing many experiments, * * produced the invention shown in the patent in suit and had it patented under said patent" (Rec. 29.)

Among the devices which the record shows had been on the market to some small extent, were what are called in this case the Wiard-Socket and the Sargent Hull-Socket. Both were unsatisfactory to the trade and the public generally, since they would *not* hold the rope *securely*, and were *not reliable* because they allowed the rope to slip and thus form a slip-noose about the neck of the horses and cattle, endangering their being choked to death or seriously injured. The record shows this fact. It also shows that both of these prior devices were driven from the market and superseeded by the Covert device. That some of the very dealers who were attempting to make the best of these prior devices requested Mr. Covert to enter upon this field of invention and overcome the existing difficulties.

The record further shows that the appellants (the defendants below) had themselves been endeavoring to introduce the Sargent-Hull device, and that it had proved to be a failure and was supplanted by the Covert invention. It further shows that these appellants, meeting with this state of things, appropriated the Covert invention, infringed the patent, made the infring-

ing articles so exactly like those being sold by the appellee that they were not distinguishable. It also shows that the appellants deceivingly, if not falsely, marked these infringing goods with an alleged patent date, by labeling them as "Patented May 13th, 1879," thereby misleading the public and violating Sec. 4,901, Revised Statutes of the United States, and giving a deceptive, if not fraudulent, color of right to sell the infringing goods. The record also further shows that the appellants further labeled these goods with the word "Covered," in imitation or simulation of appellee's name, Covert, and the name of his firm, Covert Mfg. Co. By means of these two deceptions or frauds, they deceived the public and injured, harassed and embarrassed the appellee.

The record also shows that the defence is based upon want of novelty or invention, in view of this very Wiard socket, the device which was driven from the market by, and abandoned by the trade when, the Covert invention was introduced. That device, as will appear more fully hereinafter, worked upon a different principle from the Covert device. The Wiard device held the rope, or *attempted* to hold it, by *friction*. The Covert device absolutely holds the rope, not by friction, but by passing down transversely *into* or *through* the *rope*. We think this case is like the Barb Wire Patent cases (143 U. S., 275) and like Topliff vs. Topliff (145 U. S., 156) and Keystone Mfg. Co. vs. Adams (151 U. S., 139).

The Wiard patent is set up in the answer. A prior use by the Stanley Rule & Level Co. is also set up in the answer. The witness Walter

is called by the defendants (Rec. 41), to prove this prior use. This exhibit is produced. Thus it appears that the Wiard device, strictly speaking, that is, the Wiard device as shown and described in the patent, is not proved to have ever been on the market. When they came to operate under the patent the Stanley Rule & Level Co. changed the construction of the screw to the form shown in this exhibit, according to the testimony of Walter. In this its improved form, as above seen, the device was driven from the market by the choice of the public for the Covert device.

Let it be noted right here that the appellee is not seeking to monopolize the whole art of cattle ties, but only to maintain that which he contributed to the art. The appellants will say there was no invention, no novelty, no ground for the patent. But, in a word, it may be answered back, that the Covert device, in its entirety, is not found in the Wiard patent, and that appellants' device, just as it is, is a duplicate of Covert's; so that whether Covert's ground be broad or narrow, little or much, it is good as far as it goes, and appellants, it is clear, have taken it all, whether much or little. This line of defence is the "wisdom which comes to an infringer after he is made to face the penalties of the law." Judge Woodruff (3 Fish., 104). Is "prophecy after the event." Judge Sprague (1 Fish., 175). They acquired commercial success by Covert's device, and now seek to say it is not essentially different from Wiard's. Equity ought not to accept such a statement.

An explanation of the exhibits will be useful.

Statement of Exhibits.

APPELLEE'S EXHIBITS:– Complainant's Exhibit A, is the notice to take testimony. (Rec. 8.)

Complainant's Exhibit B, is the patent in suit. (Rec. 8.)

Complainant's Exhibit C, is a certified photolithographic copy of the amendment to complainant's application while pending in the Patent Office. (Rec 11.)

Complainant's Exhibits D, E, and F, are specimens of the infringing devices sold by appellants. (Rec. 12.)

Complainant's Exhibit G, is a specimen of the patented device sold by appellee. (Rec. 28.)

Complainant's Exhibit H, is a specimen of the Wiard socket and screw as sold by the Stanley Rule & Level Co., and driven from the market by appellee's device. (Rec. 25.) It does not agree with the Wiard patent.

Complainant's Exhibit I, is a specimen of the Sargent-Hull Cattle Tie once sold by the appellants, but also driven from the market by appellee's device, and abandoned by appellants (Rec. 27.)

Complainant's Exhibit J, is one of a batch of the infringing devices sold by the appellants. (Rec. P. 32.)

Complainant's Exhibit Q, a specimen of the tags attached to the infringing devices by appellants, bearing the deceptive or false mark, namely: "PATENTED MAY 13, 1879," and the deceptive word "COVERED." (Rec. 30, Ans. 29, 30; Rec. 31, A 8, and Rec. 32). This tag bears this matter:

1 DOZEN No. 41

JUTE ROPE

CATTLE TIES

With Two (2) No. 21 Tinned Thimbles, and
Nos. 141 & 148 COVERED Spring Snaps.

PATENTED MAY 13, 1879.

Sargent & Co.

Complainant's exhibit, defendant's catalogue of 1882, contains on page 5 this matter: "Patent Cattle Ties—For Rope." (Then appears a cut of the infringing thimble and screw, with an ordinary-appearing snap-hook.) "Patented May 13, 1879. With Sargent's Patent COVERED Spring Snaps."

APPELLANTS' EXHIBITS:—Defendant's Exhibit, Wiard Sharpened Screw, is a supposed device, hypothetically used. (Rec. 33, X. Q. 37, Rec. 40, middle of the page.)

Defendant's Thimble "Round Point Screw," is another supposed device, hypothetically used. (Rec. 34, x-Q. 43.)

Defendants Exhibit, "Stanley Rule and Level Company's Cattle Tie" (Rec. 43), is a specimen of one of the Wiard devices as changed by the Stanley Rule and Level Co., which were driven from the market by appellee's device.

Defendants' Exhibit, "Bradford Round Pointed Screw" (Rec. 49), is a specimen of the screw which it is pretended appellants made some of in November, 1885 (Rec. 51, Ans. 31). It is also said by appellants' witness, Bradford, that this screw differs from 'Exhibit E," one of the infringing specimens, in that this screw simply presses the rope instead of dividing and entering it (P. 49, A. 9).

Defendants' Exhibit, "Bradford Rope and Thimble," (Rec. 49). This witness, Bradford, an employee of the defendants, is clearly unreliable, being evasive and even untruthful. He pretended that a rope would slip through this exhibit with the screw down through the rope. When asked to demonstrate his statements by endeavoring to pull the rope through the device, he declined to do so, saying that he was not accustomed to pulling such things with his hands. It appears also from the record that his alleged test made in the defendants' shop was done by placing the thimble and screw an inch or two from the end of a rope, the twists of which were loose and the ends of the strands of which were not properly bound. A reading of the cross examination of this witness (pp. 50-58) is respectfully invited, and from which the character of this man will appear.

"Defendants' Exhibit Complainants File Wrapper and Contents" (Rec. 59), is not in the transcript, or at least not in the record as printed in this Court.

The Evidence.

Brief excerpts from the record will show the following things:

1. That appellants deceivingly, if not falsely, marked the infringing goods as patented.

2. That appellants fraudulently labeled the infringing goods with the word "Covered," in imitation of appellee's name.

3. That the device the appellants attempted to put on the market, preceding the infringement, was a commercial failure, and of little practical value.

4. That the alleged anticipating device, set up in the answer, was driven from the market by appellee's invention, and was abandoned by the trade and left unsold on their shop shelves, and was inferior and unsafe in practice.

5. That between such devices and appellee's invention there are differences in construction and a resulting substantial difference in the principle and mode of holding the rope.

Appellants Deceiving or Falsely Marked the Infringing Device patented.

Mr. Covert was asked: (Rec. 30.)

Q. 29. "Have the defendants been accustomed to marking cattle ties and horse ties made by them like complainants' Exhibits D and E, as made under any letters patant?

A. They have, by attaching to said cattle tie a tag upon which was printed the words: 'Patented May 13th, 1879.'

Q. 30. Can you produce one of such tags?

A. I can and I do (referring to complainants exhibits.)

Q. 31. Have you personally examined the Official Gazette of the United States Patent Office, issued May 13th, 1879, for patents for an improvement for either thimbles or rope clamps, and after such examination were you able to find any patent granted on that day for either of the improvements?

A. I have made such an examination and find neno."

The witness Burgess was asked:

Q. 7. "Can you produce a sample of a cattle tie which you bought for William T. Burgess from the defendants, and which the defendants delivered to the said William T. Burgess?

A. I can, and I now produce seven.

Q. 8. Did the bundle of cattle ties sold and delivered by the defendants to W. T. Burgess have the tag thereon which is now attached to the bundle of cattle ties which you have in your hands?

A. It had."

See "Complainant's Exhibit Q," Rec. 30, 31, 32, and "Complainant's Exhibit, Defendant's Catalogue of 1882."

This shows that appellants attempted to deceive the public, and the trade in particular, into the belief that their infringing device was patented, thus giving a color of right to their fraudulent appropriation of appellee's device; a strong equity in favor of appellee, and a good reason for the exercise of the powers of the Court against them.

Appellants Simulated Appellee's Name.

This Exhibit Q also shows that appellants called these goods "Covered." This coined word is very much like appellee's name, both in appearance and sound. This is a palpable wrong and fraud upon the public as well as upon the appellee. First, appellants appropriate appellee's patented device. Then they deceivingly use a patent date and mislead the public while injuring appellee. Then they go one step further, perhaps the last within their comprehension, and simulate appellee's name, in order to thereby represent themselves and their goods as appellee and his goods.

Prior Devices.

The record shows but two prior devices. The first, is the Sargent-Hull Socket, shown in complainant's Exhibit I, and proved into the case by appellee himself. The second, is the Wiard device, the patent covering which is set up in the answer. This device was also proved into the case by appellee himself, and was afterwards further brought in by appellants.

The following excerpts from the evidence of the appellee will show that both of these prior devices were not satisfactory to the trade,

and fell into disuse, because of their inherent defects; and were displaced and driven out of the market by this Covert invention involved herein; and will also show why this invention came to be made by him.

Mr. Covert testified (Rec. 29, Q. 18), as to how he came to invent the device, saying:

A. "While on the road selling snaps (snap hooks) and other goods of our manufacture, I heard so many complaints of the only devices used for the purpose of hooking snaps into cattle and horse ties at that time, and being requested by some customers to get up something that would overcome the objections to such devices, which they explained to me, I realized the importance of such a device, and also the profits that would accrue to anyone who got up such an invention by the sale of such a device, that I spent a large amount of time, money and thought in experimenting to get up such a device as would overcome all difficulties, and I finally, after a great deal of thought and testing many experiments which I made, produced the invention shown in the patent in suit and had it patented under said patent.

Q. 19. What were the devices referred to by you * * * ?

A. One was known as the Sargent-Hull Cattle Tie-Iron, and one by the name of "Wiard."

Q. 20. State, if you know, who made and sold the Sargent-Hull Cattle Tie-Iron?

A. They were made and sold by the defendants in this suit. Hull was the name of the patentee.

Q. 21. State, if you know, who made and sold the so-called Wiard device?

A. The Stanley Rule and Level Company, of New York City, and New Britain, Conn.

Q. 22. Do you find among the exhibits of the complainant a sample of either of Sargent-Hull's Cattle Tie-Iron, or the Wiard Socket?

A. I do.

A. to Q. 23. Complainant's exhibit I is the Sargent-Hull Cattle Tie-Iron, and complainant's exhibit H is the Wiard Socket.

Q. 26. Please state what objections were made by the persons who wanted you to invent something which would take the place of the Sargent-Hull Cattle Tie-Iron and the Wiard Socket * * * ?

A. They explained that in using the Sargent-Hull Cattle Tie-Irons the rope had to be of uniform size, for if the rope was too small it would slip through and choke the animal; also, if it needed adjustment to a different sized rope it could not be done without a screw-driver to remove it from

and replace it on the rope; and also, that the two small screws were liable to work out and be lost. As to the Wiard Socket, it was considered very unsafe, as the screw answered only as an insecure clamping device which often worked loose, allowing it to slip."

Sargent-Hull Device.

Mr. Hull testified to having been a hardware dealer for 24 years, that he was familiar with this device, having had them in his store for about ten years (prior to August, 1886), but had bought none during those ten years as he found difficulty in selling them, because:

"The difficulty of fastening the tie to the rope so as to secure it against slipping, endangering choking of the animal. The difficulty in fastening the 'iron' to the tie was in getting a rope of proper size. If the rope was too large, the screws were not long enough to hold it (the halves of the casting) together. If the rope was two small it would slip through, and by reason of a curve in the iron there was a difficulty in getting the rope into the iron. If the rope slipped at all it would cause the rope to shirr up and choke the animal. Another difficulty I found in selling the said 'iron' was that the 'Covert Thimble' came into the market and was considered far better for the purposes, and displaced the 'Sargent-Hull Cattle Tie-Iron' with me." (Rec. 18, Ans. 3, 4, 5, 6, 7.)

He then testifies to having bought and sold the Covert Thimble, made under the patent in suit, shown in "Complainant's Exhibit G," saying:

"My impression is that it was some eight or ten years ago" (that he commenced buying them), and that he also "bought thimbles from Sargent & Company, the defendants in this case, which have the appearance of Covert's thimble," referring to complainant's Exhibit F, being a specimen of the infringing tie." (Rec 18, 19: Ans. 9, 13.)

Mr. Turner, a hardware buyer for about fourteen years, testified to his familiarity with such goods, and that he had bought Sargent-Hull Cattle Ties from appellants about twelve years before, but that he stopped buying them because: "*Other goods displaced them*," name-

ly, "the Covert Thimble, made under the patent dated April 6th, 1875, being the patent in suit." (Rec. 21, 22; A. 1, 3, 8, 10, 12, 13.)

Mr. Osborn, a hardware salesman for ten years, testified, referring to the Sargent-Hull device, complainant's exhibit I, that he had taken this exhibit from the stock of the hard-ware store with which he was connected in Troy, New York, where it, with others, had been:

"As long as I remember; I think as long as I have been there; I do not think any have come into the store since I have been there as a salesman," * * * where they had been "because there was no sale for them" * * * "because there are other devices which are better adapted for the purposes than they are, and which came into the market and displaced them," referring to the "Covert Thimble made by the Covert Mfg. Co.," adding that his firm has "bought and sold them (the Covert Thimbles) for a number of years, and are now buying and selling them, and have sold large quantities." (Rec. 26, 27; Ans. 1, 2, 10-15.)

Wiard Device.

Mr. Hull, the witness already quoted from, was asked:

Rec. 19. Q. 15. "I now hand you the socket known as the Wiard Socket and Screw. * * Please state your opinion as to the practicability of the said socket for use upon horse or cattle ties. Before answering this question please tell also what experience you have had in the manufacture of horse and cattle ties, so that the court can judge of your fitness and qualification to make answer to said question.

A. I have had a man in my employ for years who makes horse and cattle ties under my supervision and direction. My opinion of the Wiard Socket Screw is that it is not good for anything.

Q. 16. Please give your reasons * * * ?

A. My first objection is to the flat end of the screw where it strikes the rope.

This should be pointed so as to penetrate the rope, whereas the end of this, the Wiard screw, being flat and smooth, would not hold the rope sufficiently to prevent slipping. Another reason is, that a slight turn on the end of the screw when the tie is on the animal's neck might loosen it enough so that it would slip and choke the animal, by slipping and decreasing the size of the loop."

Mr. Turner, a witness also already referred to, testified that he had bought Wiard sockets from the Stanley Rule & Level Co. "about ten years ago," and that his firm did not now deal in the Wiard Socket because :

"Other goods of this character were offered to us and considered better and more practical, and which we adopted in place of this ; in other words, other goods displaced them."

The other goods, he then said, were the Covert thimbles, made under the patent in suit. (Rec. 21, 22; A. 5-7, 11-13.)

Mr. Byrne, a hardware merchant of Albany for twenty-one years, testified that one of his firms formerly bought the Wiard device, but had not bought any for twelve years, and did not continue to buy that device :

"Because we consider it unsalable, and we have changed to the Covert thimble, because the trade demanded, and we carried some of the Wiard sockets and screws in stock for years, because we could not sell them."

Being asked about the objections to the Wiard device, he said :

"Yes. I heard that they would slip on account of the end of the screw being blunt.

Q. 12. Whom have you heard make the objection in your last answer ?

A. Customers and users of horse and cattle ties and the trade generally.

Q. 12. What, in your opinion, is the practicability of the Wiard socket and screw?

A. I do not think it at all practicable ; the screw is liable to be turned by reason of the extension of the head of the screw by a knock, and one turn of the screw would loosen it.

Q 14. Have any of your firms ever bought any of the Covert thimbles ?

A. We have continuously, and the firm of Corning & Co. have them in stock now. There is continual sale for them." (Rec. 22-24; A. 1, 2, 5, 6, 8, 9, 11-14.)

Mr. Leeds, a buyer for a firm dealing in hardware, steel and iron, in Troy, New York, with whom he had been for fourteen or fifteen years, nine or ten years of which, continuously, he was a buyer, testified that he obtained "Complainant's Exhibit H," being the Wiard device, from a box bearing the label of the Stanley Rule & Level Co., containing other specimens of the device, in the store of his firm where they had been "to my own knowledge, nine or ten years," * * "because there was no sale for them."

He then said that his firm had bought and sold the Covert thimble, and that there is and has been a demand for them since they first commenced to buy them of the Covert Mfg. Co., and then added that since he had been buying for his firm they had never bought from any person, firm or corporation any (more) of the Wiard sockets, which were made under the Wiard patent of June 9th, 1868. (Rec. 24-26; A. 1-3, 12-17.)

Public Demand for Cattle Ties.

Appellee had no way of showing what number appellants had sold of the Sargent-Hull device, which was driven from the market by appellee's device, and dropped and abandoned by the appellants when or before they commenced infringing. And appellants did not show the number, because, undoubtedly, its commercial value was so low and insignificant.

On the cross-examination of appellants' witness, Walter, superintendent of the company that made the Wiard device, appellee drew out a showing of the number of Wiard devices sold

during the seventeen years from 1869 to 1885, inclusive, which was 10824 dozen. (Rec. 44, 45; x-Q. 29, 34.)

Appellee's patent issued in April, 1875. That year 1,114 dozen Wiard devices were sold, the greatest number ever sold in one year. In 1876, the next year, the number dropped to 664 dozen. From that time on the number decreased year by year, except a slight rise in 1879, until 1885, when it fell to 65 dozen, notwithstanding that it had been advertised by the traveling men of the Stanley Rule & Level Co., by samples, by illustrated catalogues and by agents over the country for a period of seventeen years.

In the latter half of 1885 appellee sold 7,960 dozens of the Covert device as compared to the 65 dozen, in the whole year, of the Wiard device.

After 1885 no more of the Wiard devices were sold, they disappeared from the market. The very next year, 1886, there were sold 15,240 dozens of the Covert Device as against none of the Wiard device.

From January 1st, 1881, the year when this infringement arose, down to April 6th, 1887, in which year the injunction was granted, appellee sold 94,443 dozens of his devices.

From 1881 to 1885, inclusive, there were but 1,362 dozens Wiard devices sold. During the same period of time there were sold 59,277 dozens of appellee's devices, as against this 1,362 dozens of the Wiard devices.

And we repeat that from January 1st, 1881, to April 6th, 1887, appellee sold 94,443 dozen of his devices. Besides this appellants admit

having sold 21,559$\frac{11}{12}$ dozen of the infringing devices during the same period. (Rec. 73; Ans. 18.)

Thus of the Wiard device, during seventeen years, but 10,824 dozen were sold, compared with 116,002 dozen of appellee's device sold during a period of six years and three months.

Thus also after 1885 none of the Wiard devices were sold, while from that time to April 6th, 1887, when the statement was closed, there were sold by appellee alone 25,166 dozen.

So much for the commercial status of the invention in suit, and the *lack* of commercial status of the alleged anticipating Wiard device.

Covert-Wiard Differences.

The expert testimony of appellee shows, and is not shaken at all by the expert testimony of appellants, that there are two essential mechanical differences between the Covert device and the Wiard device. The first is in arranging the eye of the screw in the Covert device so that any knocking or striking of that end of the screw cannot possibly act to unscrew it, and thus let the thimble slip and the noose contract and choke the animal. Covert, in carrying this out, locates the eye centrally with respect to the body of the screw. Wiard placed the eyes of his screw each at a considerable distance to one side of the center, thus exposing the device to the above objection; in the first place, and also exposing the user to the risk of snapping the snap-hook into the wrong eye, especially at night and in the dark, which is constantly the case during the winter months, when much of the caring for stock is done after nightfall. Should the user

engage the snap with the wrong eye, a strain will turn the screw back; that is, if the strain is in the direction to unscrew the screw, and it is just as apt to be in this direction (according to which way the loop is thrown around the animal's neck) as it is to be the right way.

The second mechanical difference is in the character of the screw itself and the consequent *mode* or *principle* by which the *rope* is *held* in the two devices. Wiard does nothing but bind down on the rope, and hold it by the *pressure* or *friction* of his screw. This is all; this is all he depends upon, *but this is not enough*. It is obvious that strains brought upon the rope by the animal in the act of lying down, or getting up, or otherwise moving in the stall, will strain the rope, and hence contract its size. This done, it will slip past the screw, and the fatal closing of the noose will result. This is supported by the testimony of the trade.

In the Covert device the character of screw, as we have said, is different, and there is a *resulting difference* in the *mode* or *principle* of *holding* the rope. With this invention the *rope* is *traversed through* and *through*, or practically so, by the screw: the *friction* feature is *eliminated*, with its *attending uncertainties*, a *positive* non-frictional, non-slipping and *bodily engagement* and *division* of the rope is employed. At the same time, the rope is crowded against the walls of the thimble at each side of the screw; yet the strands or fibers of the rope are *not* marred or injured. This is the thought that underlies the Covert invention; this is his; this is new, absolutely new. As has been said, by this court:

"A patentable invention is a mental result. It must be new and shown to be of *practical* utility. Everything within the domain of the conception belongs to him who conceived it. The machine, process, or product is but its material reflex and embodiment. A new idea may be engrafted upon an old invention, be distinct from the conception which preceded it, and be an improvement. In such a case it is patentable." Smith vs. Nichols, 21 Wall., 112, 118.

Such is the Covert invention. It is a mental result. It is new and has been shown to be of great *practical* utility. This pointed screw is but its material reflex and embodiment. It is a *new idea* ingrafted upon Wiard's *failure;* is distinct from any conception that preceeded it, and is an undisputed improvement, providing against so serious an evil as the possibility, not to say the probability of choking dumb animals. In such a case, the device is patentable.

The Patent Office so regarded the Covert invention when, with the Wiard patent before it, as the record shows (Rec. 11), it allowed the claim of the patent as soon as it understood the full purport and meaning of the peculiar sharp pointed screw. For the amendatory claim, the one now in the patent, differs from the original claim, principally in specifying "the sharp *point* x for *entering into* the *rope*."

The communication of the solicitors that accompanied this new claim said, among other things, nor is the Wiard "Screw provided with a tapering end, or point to catch *into* the rope; the screw he uses is flat and simply held the rope by *friction;* the two cases are essentially different in construction and *use*." (Rec. 11.)

Again, the slightest unscrewing of the Wiard screw will free the rope, but many turns of the Covert screw will not free the rope. It has to be

substantially *withdrawn* from the interior of the socket before the rope can slip. It is a fact that some how or other animals succeed in kinking and twisting ropes with which they are tied. In this way, by the effort of the rope to recoil, the screw is constantly liable to be turned in the Wiard device. The rope is thus freed. In the Covert device the rope is *not* freed thus.

Infringement.

This question is easily disposed of. Appellee's expert testifies that the infringement is clear. Appellants' expert does not make much of a denial, if any, any more than to try and make it appear that the words "cast therewith," in Covert's claim, refer to the screw threads in the projection *a*, rather than that this projection is cast with the tube, which latter is the obvious fact, as seen in Figure 2 of Covert's drawing. The threads are too small to be cast practically; certainly the solicitors, who were experts in mechanics, did not mean to say that the threads were cast, certainly the Patent Office examiner, another expert, did not so understand the claim, and give such a claim his sanction; and moreover, the grammatical construction of the claim does not necessarily carry this meaning, but rather does not mean this. The copy of the communication of the solicitors, appearing on page 11 of the Record, is a true copy of the original as to *punctuation* and *otherwise*. In this copy there is no camma after the word "therewith." In the claim as printed in the Patent, there is a comma after therewith.

This the proof readers inserted. Clearly a comma should have been used, but the proof

readers should have put it after the words "screw-threads." Then the argument of the solicitors before the Patent Office, made on the same sheet as the claim, speaks of the projection not being cast with the thimble, in the Wiard device, and practically says that the projection is cast with the thimble in the Covert device. This is only of importance in showing the fallacy of appellants' position on this question. Supposing, however, that the words "cast therewith" did refer to the threads; that would only describe the manner of making that part of the device, and not the device itself when made, and hence infringement cannot be avoided in this manner. Again, cast threads, (when large enough to be cast at all) are the equivalent of cut threads, so that here again this wonderful effort to avoid liability for having taken a thing, body and soul, falls. We should regret to think that rules of construction and the Patent laws stood upon such narrow ground. If they did, the purpose of the constitution in respect of this class of property would, indeed, never be realized, for who would go through the labor of invention, the work of experiment, and the ordeal of litigation when upon such narrow ground it could all end in a Waterloo.

The Law Governing the Case.

This state of facts, it is believed, brings this case within several of the recent decisions of this Court.

In the *Barb Wire Patent* case, decided by this Court in the October term 1891, Mr. Justice Brown said:

"From this review of the state of the art at the time the patent in suit was issued, it is evident that Glidden can neither claim broadly the use of the plain or the twisted wire, nor the sharp thorns or barbs, nor indeed the combination of the two as they appear in the Kelly patent. It does not follow, however, that he did not make a most valuable contribution to the art of wire fencing in the introduction of the coiled barb in combination with the twisted wire, by which it is clamped and held in position. By this device the barb was prevented from turning or moving laterally and was held rigidly in place. If this be also true of the device shown in fig. 2 of the Kelly patent of February 11th, 1868, the immobility of the barb in that patent is due to the aid of a blow struck by a hammer, since the mere fact that the barbs were strung upon the wires would not of itself prevent a movement within certain limits unless they were held fast by compression. Indeed, it is obvious, as the patentee says, that the effect of the second wire is simply to increase the strength of the wire, and not, as in the Glidden patent, to hold the barb rigidly in place, though, of course, it would prevent its movement to any considerable extent in either direction. * * The vital difference in the two patents is in the shape of the barb itself." (p. 282.)

(Wiard's screw is blunt, with eyes remote from the center. Covert's screw is pointed with a central eye.)

"In one case a flat bit of metal is used of an elongated diamond shape, through which a hole is pierced, by means of which it is strung upon the wire, requiring something more than the aid of a second wire twisted upon the first to render it immovable. In the other the barb is a piece of wire coiled about one of the wire strands, and held ridgidly in place by the twisting of another wire about the first." (p. 282.)

(This distinguished between the hole punched out, and a hole formed by coiling the wire barb. Clearly, the Court's recognition of invention here, rests upon the difference in the result. So the patentable distinction between Covert and Wiard rests upon the difference in result. The point and central eye led to that result, and hence became patentable.)

"It is true that the affixing of barbs to a fence wire does not apparently give a wide scope to the ingenuity of the inventor; but from the crude device of Hunt" (Wiard, Sargent-Hull) "to the perfected wire of Glidden, (Covert) each patent has marked a step in the progress in the art. The difference

between the Kelly fence and the Glidden fence is not a radical one, but slight as it may seem to be, it was apparently this (so with what Covert did) which made the barb wire fence a practical and commercial success. The inventions of Hunt (Wiard) and Smith (Sargent-Hull) appear to be scarcely more than tentative, and never to have gone into general use. The sales of the Kelly patent never seem to have exceeded 3,000 tons per annum, while plaintiff's manufacture and sales of the Glidden device (substituting a sharp barb for a blunt one,—Covert's pointed screw with central eye, for Wiard's blunt screw with spread-apart eyes—rose rapidly from 50 tons in 1874 to 44,000 tons in 1886, while those of its licensees in 1887 reached the enormous amount of 173,000 tons." (See page 16 this brief.)

"Under such circumstances courts have not been reluctant to sustain a patent to the man (Covert in this case) who has taken the final step which has turned a failure into a success. In the law of patents it is the last step that wins. It may be strange that, considering the important results obtained by Kelly in his patent (partial results by Wiard), it did not occur to him to substitute a coiled wire (pointed screw and central eye) in place of the diamond shaped prong (blunt screw and spread-apart eyes) but evidently it did not; and to the man (Covert) to whom it did ought not to be denied the quality of inventor. There are many instances in the reported decisions of this Court where a monopoly has been sustained in favor of the last of a series of inventors, all of whom were groping (Wiard) to attain a certain result, which only the last one (Covert) of the number seemed able to grasp. Conspicuous among these is the case of Loom Co. vs. Higgins, 105 U. S., 580, 591, where an improvement in looms for weaving pile fabrics consisted of such a new combination of known devices as to give a loom the capacity of weaving 50 yards a day, when before it could only weave 40, was held to be patentable. * * * It (the new arrangement) may have been under their very eyes, they (Wiard, Sargent-Hull) may almost be said to have stumbled over it; but they certainly failed to see it, to estimate its value, and to bring it into notice. * * * Now that it has succeeded, (Covert's invention) it may seem very plain to anyone that he could have done it as well. This is often the case with inventions of great merit." * * *

"So in *Consolidated Valve Co. vs. Crosby Valve Co.*, 113 U. S., 157, 179, it was said, that Richardson's (Covert's) invention brought to success what prior inventors (Wiard, Sargent-Hull) had essayed and partly accomplished (barely partly in this case). He used some things which had been used before, but he added (the pointed screw and central eye) just that which was necessary to make the whole a practical, valuable, and economical apparatus. The fact that the known valves were not used (Wiard's device is still on the shelves of shops), and the speedy and extensive adoption of

Richardson's valve (Coverts device) are facts in harmony with the evidence that his valve contains just what the prior devices lacked (pointed screw and central eye), and go to support the conclusion at which we (Judge Wallace in this case) have arrived on the question of novelty.'" (p. 284; 143 U. S., 275.)

In *Gandy vs. Main Belting Co.*, 143 U. S., 587, this Court, speaking through Mr. Justice Brown, further said:

"In view of the fact that previous attempts, of which there appear to have been several, to make a practical canvas belt had been failures, and that Gandy had been experimenting (Mr. Covert testifies to having experimented to find a way to hold the rope against slipping) with the subject for several years before he discovered that a change was necessary in the structure of the canvas itself. We do not think his improvement is a change in degree only, or such an one as would have occurred to an ordinary mechanic, and our opinion is that it does involve an exercise of the inventive faculty. The change is such as would only have occurred to one familiar, not alone with the importance of making a practical belt out of ordinary canvas, but to one who had bestowed considerable thought upon the method of overcoming the difficulty. (Covert was seeking a new method to dispense with friction, yet not mar the rope.) While some of the testimony would seem to indicate that there is not great advantage in this method of construction, we think that the fact that it has been largely adopted by manufacturers (Covert's device is generally bought by dealers; the older ones have dropped out of the market) and that all the modern improved belting ordered or made by Gandy and in general use both in this country and in Europe, is made in this way, is, for the purposes of this case, sufficient evidence of its utility." (p. 595.)

So in *Topliff vs. Topliff*, 145 U. S., 156, this Court, again speaking through Mr. Justice Brown, in distinguishing between the Augur patent and a previous one, said:

"While it is possible that the Stringfellow and Surles patent might, by a slight modification, be made to perform the function of equalizing the spring which it was the object of the Augur patent to secure, that was evidently not in the mind of the patentees, and the patent is inoperative for that purpose. Their device evidently approached very near the idea of an equalizer; but this idea did not apparently dawn upon them (holding the rope by harmlessly passing through

it did not dawn upon Wiard) nor was there anything in their patent which would have suggested it to a mechanic of ordinary intelligence, unless he was examining it for that purpose. (The Wiard device did not suggest the Covert invention to any of the dealers who dealt in it, for, to the contrary, some of those very dealers requested Covert to find a way to overcome the defects in the Wiard device.) It is not sufficient to constitute an anticipation that the device relied upon, might, by modification, be improved to accomplish the function performed by the patent in question, if it were not designed by its maker, not adapted, nor actually used for, the performance of such function." (p. 161.)

Further distinguishing the Augur patent from prior devices that had standards rising from the bolster, and links perpendicular above the axle, and speaking of the inoperativeness of this arrangement if links were used at both ends of the vehicle, he said:

"In the Topliff and Ely patent, to obviate this, and to enable the device to be applied at both ends of the springs, the links are turned horizontally, or somewhat dependent, so that the springs can rest upon them at both ends, and thus secure a more perfect equalization. Trifling as this device seems to be, it renders it possible to adapt the Augur patent to any side-spring wagon of any ordinary construction. While the question of patentable novelty in this device is by no means free from doubt, we are inclined, in view of the extensive use to which these springs have been put by the manufacturers of wagons, to resolve that doubt in favor of the patentees, and sustain the patent." (p. 164.)

In *Magowan vs. New York Belting Co.*, 141 U. S., 332, speaking through Mr. Justice Blatchford, this Court said:

"It is remarked by Judge Nixon in his opinion, as a fact not to be overlooked and having much weight, that the Gately packing (Covert's device) went at once into such an extensive public use, as almost to supersede all (Wiard devices) packing made under other methods; and that that fact was pregnant evidence of its novelty, value, and usefulness." (p. 343.)

In *Keystone Manufacturing Co. vs. Adams*, 151 U. S., 139, this Court said:

"When, in a class of machines widely used, it is made to appear that, after repeated and futile attempts, a machine

has been contrived which accomplishes the result desired, and a patent is granted to the inventor, the courts will not adopt a narrow construction, fatal to the grant.

See also Krementz v. Cattle Co. 148 U.S. 566.

Some of the cases in the circuits aptly illustrate the rules of law deducible from the above decisions of this Court. For instance, in *Clark Co. vs. Copeland,* Judge Shipman said:

"It not unfrequently happens in the progress of the mechanical arts that a time arrives when the whole atmosphere of inventive thought is quickened with the life of an approaching discovery; that many lines of investigation and experiment converging for a long time toward a point, almost, but not quite reach it; when at least some mind by happy thought, supplied some new element or instrument, or mode of organization, and instantly gives birth to the organized idea." (2nd Fish. 22.)

Judge Shipman, in *Kirby vs. Beardsley,* distinguishing between invention and mechanical skill, said:

"I am well aware that it is no easy task to draw the true line of distinction between invention in product of original thought, and mere obvious manual changes following the beaten track of mechanical experience. This difficulty, in connection with the general merit of inventors as contributors to the material interest of society, has inclined the courts to give a liberal construction to the law, so as to protect every contrivance that can be called new, which appears at all useful. Care has been taken to give the benefit of doubt as to originality of creative thought to the inventor, so as to nourish inventive enterprise by lending encouragement to every degree of merit. This is the more important, as simple contrivances, the offspring of simple, even involuntary thoughts often produce great and beneficial results, while complex and elaborate ones, the product of long and profound cogitation, frequently prove comparatively or wholly abortive." (3 Fish. 208.)

Judge Lowell, in *Stewart vs. Mahoney,* said:

"Invention often involves a new result first thought of by the patentee; and in such cases the fact that the mechanical changes he has made are not difficult is often unimportant." (5 Fed. Rep. 302.)

We think that on the authority of the above cases, and particularly the Barb Wire Fence

case, this patent ought to be sustained and the decision of His Honor, Judge Wallace, affirmed.

We apprehend that the appellants will resort to the common method of belittling that which, as infringers, they have taken, deceivingly, marked patented, and fraudulently marked with a word pronouncedly imitative of Mr. Covert's own name. They will speak also of the obviousness of the device; and now that it is made, patented, and has succeeded on the market, they will offer their "prophecy after the fact." The following decisions of several distinguished Judges, are submitted as answering this line of defence.

In *Woodman vs. Stimpson,* it is said:

"This part of the defence, the obviousness of an invention, after it has been successfully made and patented, is one against which the courts have always manifested a strong prejudice. It is what Judge Sprague (1 Fish. 175) calls 'prophecy after the event,' and what Judge Woodruff referred to (5 Fish. 63) as 'wisdom which comes to an infringer after he is made to face the penalties of the law.'" (3 Fish. 104.)

Judge Curtis, in *Forbush vs. Cook,* said:

"Nor does the validity of a patent depend on an opinion formed after the event, respecting the ease or difficulty attaining it." (2 Fish. 672.)

Judge Swayne, in *Wood vs. Cleveland Rolling Mill,* said:

"Whether the Coldbroke machine could have been so modified as to do the work of the Kenyon (Covert) machine, is not in this case a subject of inquiry." (4 Fish. 557.)

Judge Green, in *Sickles vs. Gloucester Mfg. Co.* (1 Fish. 284) said:

"But it is not an unusual case, even among learned engineers, to see a thing after it is done, which never occurred to their minds before. I am disposed to distrust that wisdom which succeeds the event."

The same learned Judge, in *Livingston vs. Jones* (1 Fish. 526) said:

"Those who are wise after the event * * * as in many other cases, they were near the invention, and might have made it if they had only thought of it. * * * This fact is now apparent to a mechanic who has seen the patented invention before him. * * * Experience has caused me to have little confidence in the opinions of experts and professors, who often have more knowledge than judgment. * * * The art of printing was stumbled over for 4,000 years, and if a patent for it was now presented to an expert he would show you at once that the whole art consisted in multiplying impressions from a combination of movable types. He would point to the tracks of animals as original impressions from movable types, and show the invention of printing presses to be as old as Adam."

In *Adams vs. Jones* (1st Fish. 53) it was said:

"In both cases the defence amounts to no more than this: that the persons who made these supposed originals (Wiard and Sargent-Hull) came so near the patented device or machine that they might have discovered it if they had only thought of it, or could have anticipated that at some future day it could be converted to some useful, practical purpose for simplifying, cheapening and improving an important article of their own manufacture."

In *Hudson vs. Cope* (1st Fish. 616) the Court said:

"That to imagine what might have been done with a prior device, is going rather into the region of speculation than fact," * * * and "is objectionable from this standpoint of view."

Also, *Topliff vs. Topliff, supra.*

The Covert Patent issued in April, 1875. It expired while awaiting hearing in this Court, namely, in April, 1892. It is now about 19 years since the patent issued. Obviously, the question of invention (to support a patent) must be determined in the light of the knowledge of *that* day. What may now, in the development of the past nineteen years, seem an obvious step to

take (though it is not believed that such really is the case) could not and did not so appear at that time. This patent, therefore, can only be justly determined by constantly keeping in mind the state of development and the position reached by mechanical skill nineteen years ago! In construing the constitution of the United States, for instance, reference is constantly had to the history of the period when it was written. So, in regard to patents, in determining that indefinable thing called invention, as distinguished from mechanical skill, we should, by analogy, only do so with respect to what was known, and the degree of skill that had been acquired, when the invention was made. Light is thrown on this by the evidence herein, which shows that the old Wiard device was objectionable, was defective, was so considered by dealers who had them in their shops and could not sell them, and that some of them specifically requested this appellee to overcome those objections by the invention of some other device; and then the evidence shows that the appellee experimented and expended time and money and thought before he conceived of, and devised the means for, piercing the rope bodily in a transverse direction, without marring the strands, and then incidentally provided against the loosening of the screw by accidental blows against outside objects by centrally placing the eye. Judge Wallace was so satisfied that the patent should be sustained, that he so held while this evidence was all fresh before him, before leaving the bench on the occasion of the hearing, as I am informed. Added to this, the conduct of appellants merits resolving of all doubts against them.

Appellee's Recovery.

The Master awarded appellee $1,000 as the profits made by the appellants. He found also that the proofs were insufficient to compute appellants' profits beyond this, and to compute appellee's damages. Both parties excepted to the Master's report. Judge Wallace overruled all of the exceptions and confirmed the report. See his opinion on page 122 of the Record, and in 38 Fed. Rep. 237. Appellee took no cross-appeal from so much of the rulings as held that his proofs were insufficient to compute more than $1,000 of profits made by appellants, and insufficient to compute his damages, and hence may not now raise these questions.

The Slavers, 2 Wall., 383.

The Stephen Morgan, 94 U. S., 599.

Loudon vs. Taxing District of Shelby Co., 104 U. S., 771.

Gage vs. Pumpelly, 115 U. S., 454.

This, therefore, leaves nothing for review but the question raised in appellants' exception:

"That the Master erred in finding, as a matter of law, that the complainant was entitled to recover the total stipulated profits of the defendants, when the Master should have found that there was no evidence to show that the whole, or any part of said profits were due to the characteristic features of the patented rope thimbles." (Rec. 122.)

This exception was overruled, as above stated, by Judge Wallace. The finding complained of was based by the Master upon the following stipulation, presented by appellants themselves:

"It is stipulated by counsel for the respective parties, for the purpose of avoiding an expense and delay which a thorough examination of the books would require, that Sargent & Co., of New Haven, made a net profit from the manufacture and sale of the infringing thimbles of $1,500; that the defendants, as stockholders in said corporation, have derived jointly a profit of $1,000 from such manufacture and sale, to wit: That Joseph B. Sargent derived a profit of $750, and that George H. Sargent has derived a profit of $250."

Of this stipulation, of the Master's finding based upon it, and of the appellants' exception above, Judge Wallace, in his published opinion, says:

"The stipulation is that one of the defendants received $750, and the other the sum of $250, from the Connecticut corporation, which sum represented their respective interests as members of that corporation in the profits made by the corporation from the manufacture and sale of the thimbles. There is no merit in the exceptions filed by either party to the findings of the Master in respect to profits. The decree, however, will charge each defendant with the profits which he severally derived instead of charging both jointly for $1,000."

As no assignment of errors has been filed we do not, of course, know what appellants' contention, if any, will be as to this matter. As, however, the record leaves only this exception to be urged as error, it is clear no other error as to this branch of the case can now be alleged, for this Court has held directly, that it "will not review a Master's report upon any objections taken here for the first time."

Topliff vs. Topliff, 145 U. S., 156, 173.
McMichen vs. Perin, 18 How., 507.
Story vs. Livingston, 13 Pet., 359.

Appellants' contention must therefore be narrowed down to their old position, already overruled, namely: that the $1,000 stipulated profit represents the whole profit, and that appellee is only entitled to a portion of it. To sup-

port this, they say that only one element of the claim of the patent was new, and that, therefore, under the doctrine that patentees may recover only the "profit attributable to the patented feature," appellee is not entitled to the whole of the $1,900 stipulated profit.

But there are two fallacies to this contention. (1.) The one element which appellants say is the new element, namely: the point on the screw, is not alone the patented feature, because the patented feature of the cattle tie is the *combination* composing the thimble or clasp, as the patent calls it. (2.) Then the stipulation itself says that this profit was derived from "the infringment thimbles." Not from any part of the thimble, not from the entire cattle tie, not from anything but "the infringing thimbles." This language of the stipulation agrees with the language of the patent, which is for "thimbles for hitchers." This word "thimbles" in the stipulation describes the subject-matter of the claim. Clearly, then, Judge Wallace was right in overruling this exception of appellants. It is without any merit; is contradictory of the very stipulation which they themselves brought into the case, in consideration of being saved the expense and annoyance incident to examining their books. They cannot now be heard to derogate from this stipulation, and attempt to defeat it by a construction which contradicts its very terms.

Respectfully submitted,

H. A. Toulmin,
Counsel for Appellee.

Springfield, O., March, 1894.